Halsbury's Laws of England/PEERAGES AND DIGNITIES (VOLUME 79 (2008) 5TH EDITION)/1. INTRODUCTION/801. Source of peerages and dignities.

PEERAGES AND DIGNITIES (VOLUME 79 (2008) 5TH EDITION)

1. INTRODUCTION

801. Source of peerages and dignities.

The Crown is the fountain of all honour and dignity[1]. The powers of the Crown in this respect are unlimited, so that heritable dignities of a kind not used before may be created[2]. The dignities now usually created are peerages and knighthoods[3]. Since the power to grant armorial bearings is delegated by the Crown to the Kings of Arms, the right to bear arms must be regarded as a dignity[4]. The Crown may also grant warrants of precedence[5].

1 *Prince's Case* (1606) 8 Co Rep 1 at 18b; and see **CONSTITUTIONAL LAW AND HUMAN RIGHTS** vol 8(2) (Reissue) PARA 831 et seq.

2 Report on the Dignity of a Peer of the Realm (1829 reprint) vol II p 37. This report was first printed in 1822 and reprinted in 1826 and 1829 with different paginations. The pagination used in this title is that of the 1829 reprint.

3 As to peerages see PARA 803 et seq. As to knighthoods see PARAS 865-867.

4 *Manchester Corpn v Manchester Palace of Varieties Ltd* [1955] P 133 at 147, [1955] 1 All ER 387 at 392, Court of Chivalry, per Lord Goddard, Surrogate. As to the law of arms see PARA 870 et seq.

5 Warrants of precedence are normally issued in order to grant to widows or children the precedence which they would have enjoyed if their husbands or fathers had lived to inherit a peerage: see eg the *Strange of Knokin and Stanley Baronies Case* (1920) Minutes of Evidence, App 243.

Halsbury's Laws of England/PEERAGES AND DIGNITIES (VOLUME 79 (2008) 5TH EDITION)/1. INTRODUCTION/802. Abuses in connection with the grant of honours.

802. Abuses in connection with the grant of honours.

If any person:

1 (1) accepts or obtains or agrees to accept or attempts to obtain from any person, for himself or for any other person, for any purpose; or
2 (2) gives, or agrees or proposes to give, or offers to any person,

any gift, money or valuable consideration, as an inducement or reward for procuring or assisting or endeavouring to procure the grant of a dignity or title of honour to any person, or otherwise in connection with such a grant, he is guilty of an offence[1]. Where the person convicted, whether on indictment or summarily, received any such gift, money or consideration which is capable of forfeiture, he is in addition to any other penalty liable to forfeit the same to Her Majesty[2].

A contract for the purchase of a title is contrary to public policy and void[3].

1 Honours (Prevention of Abuses) Act 1925 s 1(1), (2). A person guilty of this offence is liable on conviction on indictment to imprisonment for a term not exceeding two years or a fine, or to both; or on summary conviction to imprisonment for a term not exceeding three months or a fine not exceeding the prescribed sum, or to both: s 1(3) (amended by the Criminal Law Act 1977 s 32(1); the Magistrates' Courts Act 1980 s 32(2)); Criminal Law Act 1967 s 1.

2 Honours (Prevention of Abuses) Act 1925 s 1(3).

3 *Parkinson v College of Ambulance Ltd and Harrison* [1925] 2 KB 1; and see **CONTRACT** vol 9(1) (Reissue) PARA 846.

Halsbury's Laws of England/PEERAGES AND DIGNITIES (VOLUME 79 (2008) 5TH EDITION)/2. THE PEERAGE/(1) INTRODUCTION/803. Meaning of 'peerage'.

2. THE PEERAGE

(1) INTRODUCTION

803. Meaning of 'peerage'.

Before the House of Lords Act 1999, 'peerage'[1] was defined as a dignity to which attached the right to a summons by name to sit and vote in Parliament[2]. However, in 1999 the automatic right of hereditary peers to membership of the House of Lords was ended[3]. Whilst peerage remains the means of summoning persons to the House of Lords not all peers are members of the House. There are peers who are not lords of Parliament, and there are lords of Parliament who are entitled to be summoned and to sit and vote in Parliament but who are not peers, namely the lords spiritual[4].

1 The word 'peerage' is used in several senses. Probably its most usual meaning in common parlance is any dignity of nobility, such as an earldom or a barony (see PARA 804), but a second meaning can be each of two or more dignities of nobility vested in the same peer with different lines of succession, and there is a third sense in which a peerage is used as comprehending all the dignities of nobility held by a peer, and constituting the status of an individual peer: see the *Fermoy Peerage Case* (1856) 5 HL Cas 716 at 741 per Crowder J.

2 *Norfolk Earldom Case* [1907] AC 10 at 17, HL, per Lord Davey. See also **PARLIAMENT** vol 78 (2010) PARA 834 et seq. The right was, however, modified by the Acts of Union so that peers of Scotland and peers of Ireland sat in the Parliament of the United Kingdom by representative peers only: see the Union with Scotland Act 1706; the Union with Ireland Act 1800; and **CONSTITUTIONAL LAW AND HUMAN RIGHTS** vol 8(2) (Reissue) PARA 212; **PARLIAMENT** vol 78 (2010) PARA 834.

3 Unless excepted from the operation of the House of Lords Act 1999 s 1, no-one may be a member of the House of Lords by virtue of a hereditary peerage: see the House of Lords Act 1999 ss 1, 2; and PARA 825. As to life peers and hereditary peers see PARA 807.

4 Bishops to whom a writ of summons has been issued are not peers but are Lords of Parliament: HL Standing Orders (2007) (Public Business) no 6. See also **ECCLESIASTICAL LAW**; **PARLIAMENT** vol 78 (2010) PARA 832.

Halsbury's Laws of England/PEERAGES AND DIGNITIES (VOLUME 79 (2008) 5TH EDITION)/2. THE PEERAGE/(1) INTRODUCTION/804. Degrees of peerage.

804. Degrees of peerage.

The right to a peerage is distinct from a title of honour conferring a particular rank in the peerage, which is merely a collateral matter[1]. There are five degrees of peerage[2], namely duke[3], marquess[4], earl[5], viscount[6] and baron[7]. Life peers and Lords of Appeal in Ordinary are entitled to rank as barons for life[8].

1 *Norfolk Earldom Case* [1907] AC 10 at 17, HL, per Lord Davey.

2 The ancient degrees are earl and baron. The others have been added in the exercise of the Crown's prerogative: Report on the Dignity of a Peer of the Realm (1829 reprint) vol II p 37.

3 Duke is the highest degree of peerage, although third in order of antiquity. The title was first created in 1337 for Edward, eldest son of Edward III, as Duke of Cornwall: 2 Co Inst 5; 9 Co Rep 49a; Charter Roll, 11 Edw III. See further **CROWN AND ROYAL FAMILY** vol 12(1) (Reissue) PARAS 30-31.

4 Marquess is the second degree of peerage in precedence, but fourth in antiquity. It was first introduced into England as a title or dignity in 1385 when Robert de Vere, Earl of Oxford, was created Marquess of Dublin: Selden's Titles of Honor (3rd Edn) 38, 693; 2 Co Inst 5. The creation was by charter and for life only, precedence being given between the dukes and the earls: 3 Rotuli Parliamentorum 209.

5 Earl is the third degree of peerage in order of precedence, but the first in antiquity: Cruise on Dignities (2nd Edn) c 1 s 55; Co Rep 49a. In Norman times an earldom was something of an office as well as a dignity: *Norfolk Earldom Case* [1907] AC 10, HL. Earls and barons are the only dignities known to have existed before the constitution of Parliament.

6 Viscount is the most recent degree of peerage and ranks after earl but above baron: Selden's Titles of Honor (3rd Edn) 630. The first introduction of the title into England was in 1440, when, by letters patent and investiture, John Lord Beaumont was created Viscount of Beaumont: 2 Co Inst 5.

7 Baron is the fifth degree of peerage and ranks after viscount. At the time of the Norman conquest and even as late as Magna Carta there were greater and lesser barons (Cruise on Dignities (2nd Edn) c 1 ss 50-54), but the greater barons were the only persons who seem to have enjoyed what afterwards came to be known as the dignity of peerage. As to the term 'baron' in the sense of nobility see Pike's Constitutional History of the House of Lords 6, 7.

8 Appellate Jurisdiction Act 1876 s 6; Life Peerages Act 1958 s 1(2)(a). Note that the Appellate Jurisdiction Act 1876 s 6 and the Life Peerages Act 1958 s 1 are respectively repealed and amended by the Constitutional Reform Act 2005 Sch 17 paras 9, 15, Sch 18 Pt 5 as from a day to be appointed. At the date at which this volume states the law no such day had been appointed.

UPDATE

804 Degrees of peerage

NOTE 8--Appointed day is 1 October 2009: SI 2009/1604.

Halsbury's Laws of England/PEERAGES AND DIGNITIES (VOLUME 79 (2008) 5TH EDITION)/2. THE PEERAGE/(1) INTRODUCTION/805. Classification of peers.

805. Classification of peers.

The following are the five classes of peers: (1) peers of England[1]; (2) peers of Scotland[2]; (3) peers of Great Britain (that is those peers created between the dates of the Union with Scotland and the Union with Ireland[3]); (4) peers of Ireland[4]; and (5) peers of the United Kingdom (that is those peers created since the Union with Ireland[5]).

1 As to the creation of peers see PARA 813 et seq. As to the privileges of peers see PARA 823 et seq.

2 See PARA 813.

3 Ie between 1707 and 1801: see the Union with Scotland Act 1706; the Union with Ireland Act 1800.

4 Ie a peer of that part of the United Kingdom called Ireland: see further PARA 813.

5 Ie 1801: see the Union with Ireland Act 1800.

Halsbury's Laws of England/PEERAGES AND DIGNITIES (VOLUME 79 (2008) 5TH EDITION)/2. THE PEERAGE/(1) INTRODUCTION/806. Peeresses.

806. Peeresses.

In addition to peers there are peeresses in their own right of England, of Scotland and of the United Kingdom. Most of them have inherited their peerages, although hereditary peerages have occasionally been conferred upon women[1]. Peeresses in their own right possess all the privileges of peerage[2]. A life peerage may be conferred on a woman, who thereby becomes entitled to writs of summons to attend and to sit and vote in the House of Lords[3].

1 Eg Viscountess Daventry in 1943.

2 See the Peerage Act 1963 s 6. As to the privileges of peerage see PARA 823 et seq.

3 See the Life Peerages Act 1958 s 1(2)(b), (3). As to life peers sitting in the House of Lords see PARA 824.

Halsbury's Laws of England/PEERAGES AND DIGNITIES (VOLUME 79 (2008) 5TH EDITION)/2. THE PEERAGE/(1) INTRODUCTION/807. Hereditary peers and life peers.

807. Hereditary peers and life peers.

The Crown has historically had power to create hereditary peerages under the prerogative and may also create peerages for life pursuant to statute[1]. Whilst hereditary peerages pass to successive generations[2], life peerages confer the title only for the duration of the peer's life[3]. Under the Life Peerages Act 1958, Her Majesty has power by letters patent to confer on any person a peerage for life entitling him to rank as a baron[4] under such style as may be appointed by the letters patent[5].

1 As to the Crown as the source of peerages PARA 801. As to classification of peers see PARA 805.

2 As to the estate in and descent of dignities see PARA 808.

3 See PARAS 808, 815.

4 As to barons and the other degrees of peerage see PARA 804.

5 See the Life Peerages Act 1958 s 1; and PARA 824.

Halsbury's Laws of England/PEERAGES AND DIGNITIES (VOLUME 79 (2008) 5TH EDITION)/2. THE PEERAGE/(1) INTRODUCTION/808. Estate in and descent of dignities.

808. Estate in and descent of dignities.

The dignity of a life peer or Lord of Appeal in Ordinary as a Lord of Parliament does not descend to his heirs; he is entitled to rank as a baron only during his life[1].

In contrast, a hereditary peerage is an incorporeal and impartible hereditament, inalienable and descendible according to the words of limitation contained in the grant[2]. A baronetcy is not one of the degrees of peerage[3], but it is nevertheless an incorporeal hereditament descendible in accordance with the grant[4]. Each successive heir to a hereditary peerage takes under the original grant. A declaration of legitimacy obtained pursuant to the provisions of the Legitimacy Declaration Act 1858 (now repealed) is binding for all purposes and extends to dignities[5]. A limitation to a man 'and his heirs' will not carry it to collateral heirs[6]. Baronies by writ are presumed to be limited to heirs of the body[7]. The origin of the early Irish baronies is prescriptive and their descent has always been to the heirs male of the body lawfully begotten or to be begotten of the presumed grantee[8].

A dignity which is descendible is within the Statute of Westminster the Second[9] and is descendible as an estate tail and not as a fee simple conditional, although no place is named in its creation[10].

1 Appellate Jurisdiction Act 1876 s 6; Life Peerages Act 1958 s 1(2)(a). Note that the Appellate Jurisdiction Act 1876 s 6 and the Life Peerages Act 1958 s 1 are respectively repealed and amended by the Constitutional Reform Act 2005 Sch 17 paras 9, 15, Sch 18 Pt 5 as from a day to be appointed. At the date at which this volume states the law no such day had been appointed. See also PARAS 807, 815.

2 *Nevil's Case* (1604) 7 Co Rep 33a; *R v Viscount Purbeck* (1678) Show Parl Cas 1 at 5, HL; *Norfolk Earldom Case* [1907] AC 10, HL. For a general discussion of this point see also *Viscountess Rhondda's Case* [1922] 2 AC 339, HL. A peerage cannot, therefore, be the subject of a trust or pass to a trustee in bankruptcy: *Buckhurst Peerage Case* (1876) 2 App Cas 1, HL. See also *Re Earl of Aylesford's Settled Estates* (1886) 32 ChD 162; *Earl Cowley v Countess Cowley* [1901] AC 450, HL. As to grant by letters patent see PARA 815.

3 See PARAS 804, 861-864.

4 *Re Rivett-Carnac's Will* (1885) 30 ChD 136.

5 *Ampthill Peerage Case* [1977] AC 547, [1976] 2 All ER 411, HL.

6 *Wiltes Peerage Case* (1869) LR 4 HL 126, not following the *Devon Peerage Case* (1831) 2 Dow & Cl 200, HL.

7 *Vaux Peerage Case* (1837) 5 Cl & Fin 526, HL; *Braye Peerage Case* (1839) 6 Cl & Fin 757, HL; *Hastings Peerage Case* (1841) 8 Cl & Fin 144, HL. As to the creation of baronies by writ see PARA 822.

8 See PARAS 805, 822.

9 Ie 13 Edw 1 (Statute of Westminster the Second) (1285) c 1 (De Donis Conditionalibus): see **REAL PROPERTY** vol 39(2) (Reissue) PARA 117.

10 *Re Rivett-Carnac's Will* (1885) 30 ChD 136. See **REAL PROPERTY** vol 39(2) (Reissue) PARA 3. The provision of the Settled Land Act 1925 that, where personal chattels are settled to devolve with settled land, they may be sold by the tenant for life applies where such chattels are settled to devolve with a dignity, the dignity as an incorporeal hereditament being 'land' for this purpose: see ss 67, 117(1)(ix); and **SETTLEMENTS** vol 42 (Reissue) PARAS 941-943.

UPDATE

808 Estate in and descent of dignities

NOTE 1--Appointed day is 1 October 2009: SI 2009/1604.

Halsbury's Laws of England/PEERAGES AND DIGNITIES (VOLUME 79 (2008) 5TH EDITION)/2. THE PEERAGE/(1) INTRODUCTION/809. Effect of legitimation and adoption.

809. Effect of legitimation and adoption.

The statutory provisions relating to legitimation by extraneous law[1] and legitimation by subsequent marriage[2] do not affect the succession to any hereditary dignity or title of honour or render any person capable of succeeding to or transmitting a right to succeed to any dignity or title[3]. Legitimation of the child of a void marriage[4], so far as it affects the succession to a dignity or title of honour, or the devolution of property settled with it, applies only to children born after 28 October 1959[5].

An adoption does not affect the descent of any peerage or dignity or title of honour[6]. Children adopted by peers of the realm are accorded styles and courtesy titles appropriate to the younger children of peers[7].

1 See the Legitimacy Act 1976 s 3; and **CHILDREN AND YOUNG PERSONS** vol 5(3) (2008 Reissue) PARA 128. As to peers in Scotland see the *Strathmore Peerage Case* (1821) 6 Bli NS 487, HL, and Minutes of Evidence (where the father was newly domiciled in England at the time of marriage, and it was held that there was no legitimation); *Lauderdale Peerage Case* (1885) 10 App Cas 692, HL (where the father was domiciled in Scotland and the children, although described in the will as illegitimate, were legitimated by a death-bed marriage). As to legitimation by extraneous law see also **CONFLICT OF LAWS** vol 8(3) (Reissue) PARAS 336-342; and as to domicile see **CONFLICT OF LAWS** vol 8(3) (Reissue) PARA 35 et seq.

2 See the Legitimacy Act 1976 s 2; and **CHILDREN AND YOUNG PERSONS** vol 5(3) (2008 Reissue) PARA 128.

3 Legitimacy Act 1976 s 11(1), Sch 1 para 4(2). Apart from s 1 (see **CHILDREN AND YOUNG PERSONS** vol 5(3) (2008 Reissue) PARA 127), nothing in the Legitimacy Act 1976 affects the devolution of any property limited (expressly or not) to devolve, as nearly as the law permits, along with any dignity or title of honour: Sch 1 para 4(3).

The position in Scotland is different in the case of succession to a pre-Union hereditary title: see the unreported judgment of Lord Lyon King of Arms dated 28 February 2008.

4 Ie under the Legitimacy Act 1976 s 1: see **CHILDREN AND YOUNG PERSONS** vol 5(3) (2008 Reissue) PARA 127.

5 Legitimacy Act 1976 Sch 1 para 4(1). Section 1 does not, however, affect the operation or construction of any disposition coming into operation before 29 October 1959 except so far as may be necessary to avoid the severance from a dignity or title of honour of property limited, expressly or not, to devolve, as nearly as the law permits, along with the dignity or title of honour: Sch 1 para 3(b).

6 Adoption Act 1976 s 44(1); Adoption and Children Act 2002 s 71(1). Nor does it affect the devolution of any property limited, expressly or not, to devolve, as nearly as the law permits, with a peerage or dignity or title of honour: Adoption Act 1976 s 44(2); Adoption and Children Act 2002 s 71(2). This applies only if and so far as a contrary intention is not expressed in the instrument, and has effect subject to the terms of the instrument: Adoption Act 1976 s 44(3); Adoption and Children Act 2002 s 71(3). See also **CHILDREN AND YOUNG PERSONS** vol 5(3) (2008 Reissue) PARA 378.

7 See the Royal Warrants dated 30 April 2004. The Scottish titles of 'Master of' and 'Mistress of' are specifically excepted: see the Royal Warrant dated 30 April 2004.

Halsbury's Laws of England/PEERAGES AND DIGNITIES (VOLUME 79 (2008) 5TH EDITION)/2. THE PEERAGE/(1) INTRODUCTION/810. Effect of artificial insemination or surrogacy.

810. Effect of artificial insemination or surrogacy.

Prior to 4 April 1988, a child born as a result of artificial insemination by a third party donor was considered illegitimate and the donor, not the mother's husband, was the legal father of the child[1]. However, where a child was born in England and Wales between 4 April 1988 and 1

August 1991 as the result of the artificial insemination of a woman who (1) was at the time of the insemination a party to a marriage (being a marriage which had not at that time been dissolved or annulled); and (2) was artificially inseminated with the semen of some person other than the other party to that marriage, then, unless it is proved to the satisfaction of the court that the other party to that marriage did not consent to the insemination, the child is to be treated in law as the child of the parties to that marriage and is not to be treated as the child of any person other than the parties to that marriage[2]. This does not affect the succession to any dignity or title of honour or render any person capable of succeeding to or transmitting a right to succeed to any such dignity or title[3].

In relation to children carried by women as a result of the placing in them of embryos or of sperm and eggs, or of their artificial insemination (as the case may be), after 1 August 1991[4], the provisions of the Human Fertilisation and Embryology Act 1990 relating to assisted reproduction[5] define the mother and the father of the child in question and nothing in those provisions[6] affects the succession to any dignity or title of honour or renders any person capable of succeeding to or transmitting a right to succeed to any such dignity or title, or the devolution of any property limited (expressly or not) to devolve (as nearly as the law permits) along with any dignity or title of honour[7].

1 See the Family Law Reform Act 1987 (Commencement No 1) Order 1988, SI 1988/425; *Re M (Child Support Act: parentage)* [1997] 3 FCR 383, [1997] 2 FLR 90; and **CHILDREN AND YOUNG PERSONS** vol 5(3) (2008 Reissue) PARA 101.

2 Family Law Reform Act 1987 s 27(1); Human Fertilisation and Embryology Act 1990 s 49(4); see **CHILDREN AND YOUNG PERSONS** vol 5(3) (2008 Reissue) PARAS 6, 101.

3 Family Law Reform Act 1987 s 27(3); see **CHILDREN AND YOUNG PERSONS** vol 5(3) (2008 Reissue) PARAS 6, 101.

4 Human Fertilisation and Embryology Act 1990 s 49(3); see **CHILDREN AND YOUNG PERSONS** vol 5(3) (2008 Reissue) PARA 101 et seq.

5 Ie the Human Fertilisation and Embryology Act 1990 ss 27, 28: see **CHILDREN AND YOUNG PERSONS** vol 5(3) (2008 Reissue) PARAS 102-104.

6 Ie the Human Fertilisation and Embryology Act 1990 ss 27(1), 28(2)-(4), (5A)-(5I), read with s 29: see s 29(4) (amended by the Human Fertilisation and Embryology (Deceased Fathers) Act 2003 s 2(1), Schedule para 16).

7 Human Fertilisation and Embryology Act 1990 s 29(4); see **CHILDREN AND YOUNG PERSONS** vol 5(3) (2008 Reissue) PARA 105.

Halsbury's Laws of England/PEERAGES AND DIGNITIES (VOLUME 79 (2008) 5TH EDITION)/2. THE PEERAGE/(1) INTRODUCTION/811. Effect of a potentially polygamous marriage.

811. Effect of a potentially polygamous marriage.

The succession to any dignity or title of honour is not affected by the operation of the statutory provision which confirms that a marriage entered into outside England and Wales before 8 January 1996 between parties neither of whom is already married is not void under the law of England and Wales on the ground that it is entered into under a law which permits polygamy and that either party is domiciled in England and Wales[1].

1 Private International Law (Miscellaneous Provisions) Act 1995 ss 5, 6(6)(d); see **CONFLICT OF LAWS** vol 8(3) (Reissue) PARA 240.

Halsbury's Laws of England/PEERAGES AND DIGNITIES (VOLUME 79 (2008) 5TH EDITION)/2. THE PEERAGE/(1) INTRODUCTION/812. Consequences of issue of gender recognition certificate.

812. Consequences of issue of gender recognition certificate.

A person of either gender who is aged at least 18 may make an application for a gender recognition certificate on the basis of either living in the other gender, or having changed gender under the law of a country or territory outside the United Kingdom[1]. The fact that a person's gender has become the acquired gender does not affect the descent of any peerage or dignity or title of honour, and does not affect the devolution of any property limited (expressly or not) by a will or other instrument to devolve (as nearly as the law permits) along with any peerage or dignity or title of honour unless an intention that it should do so is expressed in the will or other instrument[2].

1 See the Gender Recognition Act 2004 s 1(1); and **CONSTITUTIONAL LAW AND HUMAN RIGHTS**.

2 Gender Recognition Act 2004 s 16.

Halsbury's Laws of England/PEERAGES AND DIGNITIES (VOLUME 79 (2008) 5TH EDITION)/2. THE PEERAGE/(2) CREATION OF PEERS/(i) Limitations on Creation/813. Limitations on creation.

(2) CREATION OF PEERS

(i) Limitations on Creation

813. Limitations on creation.

The Crown has power to create any number of peerages of the United Kingdom[1]. Since the Act of Union with Scotland[2] no new peer of England or Scotland can be created[3]; and since the Act of Union with Ireland[4] no new peer of Great Britain can be created[5]. The power to create new peers in the peerage of Ireland[6] is not now exercised[7].

1 See **CONSTITUTIONAL LAW AND HUMAN RIGHTS** vol 8(2) (Reissue) PARA 212.

2 Ie the Union with Scotland Act 1706.

3 See the Union with Scotland Act 1706 art 22.

4 Ie the Union with Ireland Act 1800.

5 See the Union with Ireland Act 1800 art 4.

6 Ie under the Union with Ireland Act 1800 art 4, which entitled the Crown to create a limited number of new Irish peers in 'that part of the United Kingdom called Ireland', as the peerages existing at the time of the Union of Great Britain and Ireland became extinct: art 4; *Bloomfield Peerage Case* (1831) 2 Dow & Cl 344, HL; *Fermoy Peerage Case* (1856) 5 HL Cas 716.

7 The power was last exercised in 1898, and it now appears to be obsolete as the only part of Ireland within the United Kingdom and forming part of Her Majesty's dominions is Northern Ireland. See the Northern Ireland

Constitution Act 1973 s 1; and **CONSTITUTIONAL LAW AND HUMAN RIGHTS** vol 8(2) (Reissue) PARAS 3, 212. As to the peerage of Ireland see PARA 805.

Halsbury's Laws of England/PEERAGES AND DIGNITIES (VOLUME 79 (2008) 5TH EDITION)/2. THE PEERAGE/(2) CREATION OF PEERS/(ii) Current Methods of Creating New Peers/814. Creation of peerage by letters patent.

(ii) Current Methods of Creating New Peers

814. Creation of peerage by letters patent.

Hereditary and life peerages may be conferred on men and women alike[1]. Today a peerage is created by the Sovereign by letters patent under the Great Seal[2]. The warrant to pass the seal receives the sign manual superscribed and is countersigned by the Secretary of State[3]. The letters patent are enrolled on the patent rolls[4].

1 See the Life Peerages Act 1958 s 1(3). As to peeresses in their own right see PARA 806.

2 See the Life Peerages Act 1958 s 1(1); **CONSTITUTIONAL LAW AND HUMAN RIGHTS** vol 8(2) (Reissue) PARA 831. As to the use of the Great Seal see **CONSTITUTIONAL LAW AND HUMAN RIGHTS** vol 8(2) (Reissue) PARA 909. As to the form of grant by letters patent see PARA 815. As to historical methods of creation see PARAS 821-822.

3 As to the office of Secretary of State see **CONSTITUTIONAL LAW AND HUMAN RIGHTS** vol 8(2) (Reissue) PARA 355.

4 As to enrolment on the patent rolls see **CONSTITUTIONAL LAW AND HUMAN RIGHTS** vol 8(2) (Reissue) PARA 849.

Halsbury's Laws of England/PEERAGES AND DIGNITIES (VOLUME 79 (2008) 5TH EDITION)/2. THE PEERAGE/(2) CREATION OF PEERS/(ii) Current Methods of Creating New Peers/815. Form of grant by letters patent.

815. Form of grant by letters patent.

The Appellate Jurisdiction Act 1876 provides that for the purpose of aiding the House of Lords in the hearing and determination of appeals, the Sovereign may by letters patent appoint qualified persons to be Lords of Appeal in Ordinary[1]. The Life Peerages Act 1958 provides that without prejudice to the Sovereign's powers as to the appointment of Lords of Appeal in Ordinary, she has power by letters patent to confer on any person a peerage for life[2]. Except to the extent authorised by these provisions, a limitation by letters patent of the dignity for the life of the patentee is invalid[3].

Letters patent creating a hereditary peerage must specify the patentee, the name of the dignity and its limitation to future heirs of the patentee[4]. The limitation must be one known to the law[5]. The rule in England is a limitation to heirs male of the body lawfully begotten or to be begotten with an occasional addition of special remainders to bring in the daughters and their issue, brothers, nephews and collaterals, but ultimately the descent is always fixed in an heir male line. A limitation to heirs male as distinct from heirs male of the body is void in England[6], but not in Scotland. The presumption of law now in the case of a Scottish peerage, where the original grant has been lost or cannot be found, is that the limitation was to the heirs male generally[7], but this presumption is rebuttable[8].

1 Appellate Jurisdiction Act 1876 s 6; and see **PARLIAMENT** vol 78 (2010) PARA 842. This provision is repealed by the Constitutional Reform Act 2005 ss 145, 146, Sch 17 Pt 2 para 9, Sch 18 Pt 5 as from a day to be appointed. At the date at which this volume states the law no such day had been appointed.

2 Life Peerages Act 1958 s 1(1); and see **PARLIAMENT** vol 78 (2010) PARA 843. As from a day to be appointed, the words 'Without prejudice to Her Majesty's powers as to the appointment of Lords of Appeal in Ordinary' are repealed by the Constitutional Reform Act 2005 Sch 17 Pt 2 para 15, Sch 18 Pt 5. At the date at which this volume states the law no such day had been appointed.

3 *Wensleydale Peerage Case* (1856) 5 HL Cas 958.

4 For forms of letters patent to be used in creations see the Crown Office (Forms and Proclamations Rules) Order 1992, SI 1992/1730, art 2(1), Schedule Pt III (amended by SI 2000/3064).

5 *Wiltes Peerage Case* (1869) LR 4 HL 126 at 153, 162 per Lord Chelmsford LC; *Cope v Earl De la Warr* (1873) 8 Ch App 982; *Buckhurst Peerage Case* (1876) 2 App Cas 1 at 20, HL, per Lord Cairns LC; Cruise on Dignities (2nd Edn) c 3 s 76. A grant without words of limitation is bad in England. In Scotland a grant in fee would be presumed.

6 *Devon Peerage Case* (1831) 2 Dow & Cl 200, HL; *Wiltes Peerage Case* (1869) LR 4 HL 126. See Nicolas's Report on Proceedings on Claim to the Earldom of Devon (1832), with appendices of the Nevill, Purbeck, Lovell and Oxford Cases; Finlason's History of Hereditary Dignities 98 et seq, with special reference to the Earldom of Wiltes (1869).

7 *Perth Earldom Case* (1848) 2 HL Cas 865; *Herries Peerage Case* (1858) LR 2 Sc & Div 258, HL; *Mar Peerage Case* (1875) 1 App Cas 1 at 24, 36, HL (and see the cases there cited). As to remainders generally see Palmer's Peerage Law in England 64 et seq.

8 *Herries Peerage Case* (1858) LR 2 Sc & Div 258, HL; *Mar Peerage Case* (1876) 1 App Cas 1, HL.

UPDATE

815 Form of grant by letters patent

NOTES 1, 2--Appointed day is 1 October 2009: SI 2009/1604.

Halsbury's Laws of England/PEERAGES AND DIGNITIES (VOLUME 79 (2008) 5TH EDITION)/2. THE PEERAGE/(2) CREATION OF PEERS/(ii) Current Methods of Creating New Peers/816. Effect of shifting clause in letters patent.

816. Effect of shifting clause in letters patent.

A shifting clause in letters patent directing that a dignity should pass from the holder of the dignity to another person by special remainder upon the holder's succession to an older or greater dignity is bad; but this does not render the letters patent themselves invalid; nor are they by reason of any limitation becoming incapable of taking effect[1]. A special remainder after the exhaustion of the original limitation is good, the remainder taking effect as a new grant[2].

1 *Buckhurst Peerage Case* (1876) 2 App Cas 1, HL; cf the *Wiltes Peerage Case* (1869) LR 4 HL 126. A shifting clause may, however, be valid to impede succession: *Cope v Earl De la Warr* (1873) 8 Ch App 982. An example of a shifting clause may be found in the very elaborate letters patent creating the earldom of Cromartie, printed in Sir William Fraser's 'Cromartie Book'. At the date at which this volume states the law there had been no occasion for an examination of the validity of the patent by the House of Lords.

2 *Purbeck's Case* (1678) Collins's Baronies by Writ (1734 Edn) 293; Report on the Dignity of a Peer of the Realm (1829 reprint) vol II p 58. This view is disputed in Palmer's Peerage Law in England 83-85.

Halsbury's Laws of England/PEERAGES AND DIGNITIES (VOLUME 79 (2008) 5TH EDITION)/2. THE PEERAGE/(2) CREATION OF PEERS/(ii) Current Methods of Creating New Peers/817. Creation of peerage by Act of Parliament.

817. Creation of peerage by Act of Parliament.

Recourse to an Act of Parliament must be had when the desired limitations of the dignity are such as cannot validly be granted by letters patent[1].

1 For the need see the *Lucas Peerage Case* (1907).

Halsbury's Laws of England/PEERAGES AND DIGNITIES (VOLUME 79 (2008) 5TH EDITION)/2. THE PEERAGE/(2) CREATION OF PEERS/(ii) Current Methods of Creating New Peers/818. Territorial designation to title.

818. Territorial designation to title.

The naming of a place is not essential to the creation of a peerage[1]. It is customary, however, to include a territorial designation on the creation of a viscount or baron[2]. If there is more than one peerage having the same personal name, a place name will form part of the name of the second or any subsequent peerage[3].

1 *R v Knollys* (1694) 1 Ld Raym 10; *Re Rivett-Carnac's Will* (1885) 30 ChD 136.

2 See the Crown Office (Forms and Proclamations Rules) Order 1992, SI 1992/1730, art 2(1), Schedule Pt III (amended by SI 2000/3064).

3 Eg Simon, created in 1940, Simon of Wythenshawe, created in 1947, and Simon of Glaisdale, appointed a Lord of Appeal in Ordinary in 1971. In such circumstances a subsequent peerage is sometimes created with a double territorial designation in the form Somervell of Harrow, of Ewelme, co Oxford. Where a barony was created by writ of summons and sitting (see PARA 822), there was no territorial addition unless at some time two or more persons of the same name were summoned to the same Parliament. Then the territorial addition forms part of the name of the peerage eg Strange of Knokin.

Halsbury's Laws of England/PEERAGES AND DIGNITIES (VOLUME 79 (2008) 5TH EDITION)/2. THE PEERAGE/(2) CREATION OF PEERS/(ii) Current Methods of Creating New Peers/819. Oath of allegiance.

819. Oath of allegiance.

The oath of allegiance[1] or solemn affirmation is taken by all peers on their introduction to the House of Lords[2].

1 See the Promissory Oaths Act 1868 s 14(5); and **CONSTITUTIONAL LAW AND HUMAN RIGHTS** vol 8(2) (Reissue) PARA 925. For the form of oath see s 2.

2 Since 1999 the creation of a hereditary peerage does not entitle the peer to sit in the House of Lords (see PARA 825). It is not clear when, if at all, the occasion for taking the oath of allegiance, which would otherwise be on the introduction of the peer into Parliament, would arise.

Halsbury's Laws of England/PEERAGES AND DIGNITIES (VOLUME 79 (2008) 5TH EDITION)/2. THE PEERAGE/(2) CREATION OF PEERS/(ii) Current Methods of Creating New Peers/820. Refusal of peerage.

820. Refusal of peerage.

A subject cannot refuse to accept a peerage[1], even if conferred upon him in his infancy[2], but the usual custom is for the Prime Minister to make a preliminary inquiry whether the proposed grantee would welcome the grant.

1 *Egerton v Earl Brownlow* (1853) 4 HL Cas 1. See **CONSTITUTIONAL LAW AND HUMAN RIGHTS** vol 8(2) (Reissue) PARA 214. Refusal of a peerage is to be distinguished from disclaimer: see PARAS 836-837.

2 *Mortimer Sackville's Case* (1719), cited in 2 App Cas 6n, HL; *Duke of Queensberry's Case* (1719) 1 P Wms 582, HL.

Halsbury's Laws of England/PEERAGES AND DIGNITIES (VOLUME 79 (2008) 5TH EDITION)/2. THE PEERAGE/(2) CREATION OF PEERS/(iii) Historical Methods of Creation/821. Modes of creation.

(iii) Historical Methods of Creation

821. Modes of creation.

Peers of the various classes and degrees[1] have been created by Act of Parliament[2], by charter[3] and by letters patent[4]. Almost all peerages created today are created by letters patent pursuant to the Life Peerages Act 1958[5]. Baronies were originally created by writ of summons to Parliament followed by a sitting and this appears to have been the method usually followed down to the middle of the reign of Henry VIII[6]. A writ by the name of any rank in the peerage other than that of baron does not create a peerage of that rank[7]. The first creation of a baron by letters patent appears to have been in 1388, when John de Beauchamp of Holt was created Lord de Beauchamp and Baron of Kidderminster to him and the heirs male of his body[8].

In the time of Henry VI the opinion was held that peerages by tenure existed[9], and this opinion persisted in some degree until 1861[10].

1 See PARAS 804-805.

2 See *Prince's Case* (1606) 8 Co Rep 1 at 13b. As to creation by Act of Parliament see PARA 817. It is sometimes difficult to decide whether a particular instrument is an Act of Parliament or a charter granted in Parliament, but the distinguishing feature seems to be the assent of the Commons in full Parliament. The validity of the instrument may depend on this distinction. As to such Acts see Palmer's Peerage Law in England 46 et seq. The early view was that higher dignities, such as dukedoms, marquisates and earldoms, which entitled the holders to attend the King's Councils and Parliaments, were created by public investiture by the Sovereign himself, generally in Parliament, and that written documents were evidence of creation rather than creation itself. Any special course of succession and special money or land grants to support the dignity would, of necessity, be indicated in an Act of Parliament, a charter or letters patent. Viscounts and barons seem never to have been invested. Subtle changes of wording seem to indicate that by the middle of the fifteenth century the view was that earldoms and higher dignities were created by charter or patent and that investiture was the outward sign of creation. Modern patents contain a clause dispensing with investiture.

3 See notes 2, 4.

4 See PARA 814. In the Report on the Dignity of a Peer of the Realm (1829 reprint) vol V, a number of charters and letters patent creating dignities are printed of which a few relate to baronies. These creations are by letters patent of Henry VI and Edward IV. The earlier creations contained no clear limitation, but some make provision for the sustentation of the dignity which is limited to heirs or heirs male of the body. Stamp duty, formerly exigible on the grant of letters patent of peerages and other honours, dignities and promotions, was abolished by the Finance Act 1937 s 30 (repealed) and the Finance Act 1938 ss 51, 55(7), Sch 5 (repealed).

5 The power to create Lords of Appeal in Ordinary for life under the Appellate Jurisdiction Act 1876 is to be abolished by the Constitutional Reform Act 2005 as from a day to be appointed: see PARAS 804, 808, 815. The power to create hereditary peerages is now rarely exercised. It was last exercised in 1999 to create HRH Prince Edward Earl of Wessex and Viscount Severn, having previously last been exercised in 1983 to create William Whitelaw (then 65 and without issue) Viscount Whitelaw.

6 As to the creation of baronies by writ see PARA 822.

7 *Norfolk Earldom Case* [1907] AC 10, HL.

8 Report on the Dignity of a Peer of the Realm (1829 reprint) vol V p 81; Palmer's Peerage Law in England 263.

9 See the *Arundel Case* (1433) 4 Rot Parl 441, cited in Palmer's Peerage Law in England 179. Coke, Selden, Madox and Blackstone were of opinion that there was a sound historical foundation for this view.

10 See the *Berkeley Peerage Case* (1861) 8 HL Cas 21. The whole topic is reviewed in Palmer's Peerage Law in England 178 et seq.

UPDATE

821 Modes of creation

NOTE 5--Appointed day is 1 October 2009: SI 2009/1604.

Halsbury's Laws of England/PEERAGES AND DIGNITIES (VOLUME 79 (2008) 5TH EDITION)/2. THE PEERAGE/(2) CREATION OF PEERS/(iii) Historical Methods of Creation/822. Creation of barony by writ.

822. Creation of barony by writ.

Formerly, a writ of summons to Parliament addressed to a person, followed by the sitting of that person in Parliament, created in him a barony by writ which is descendible to the heirs general of his body, unless the person summoned was an official or his presence in Parliament was accounted for by some other reason[1]. There must be definite proof that the person summoned actually sat in Parliament[2]. Proof that a person received a writ of summons to Parliament raises no presumption that the person actually sat[3]; nor is it sufficient to prove that a person received a writ of summons and account for his failure to attend, as where he was serving abroad in the wars when the Parliament was held[4]. Proof that a person sat in Parliament raises a presumption that he sat in response to a writ of summons[5]. The sitting must have been during the Parliament to which the person was summoned. His presence during the preliminary proceedings, for example prior to the arrival of one of the estates, or during the subsequent proceedings, for example after the departure of one of the estates, is not sufficient[6].

A writ of summons known as a 'writ of acceleration' was formerly a device to enable the heir apparent to a peer possessing more than one peerage entitled to a writ of summons to the House of Lords to be summoned to the House of Lords in the place of the most junior title, thus enabling the heir to take up a seat in the House of Lords before his father's death but avoiding the creation of a further peerage[7]. Writs of acceleration have not been possible since the House

of Lords Act 1999 changed the law so that a hereditary peerage no longer confers the right to sit in the House of Lords[8] unless the individual is specifically excepted[9].

A barony created by writ is also known as a barony in fee. There is only one Irish barony in fee, that of le Poer, in virtue of a writ of summons and sitting in the Irish House of Lords in 1375[10].

1 This doctrine is historically unsound, but it is now well entrenched in the law: see the *Clifton Barony Case* (1673) Collins's Baronies by Writ (1734 Edn) 291, HL; Co Litt 16b; Com Dig, Dignity (C 3). See also the *Vaux Peerage Case* (1837) 5 Cl & Fin 526, HL; *Braye Peerage Case* (1839) 6 Cl & Fin 757, HL; *Hastings Peerage Case* (1841) 8 Cl & Fin 144 at 157, HL; and the *Wharton Peerage Case* (1845) 12 Cl & Fin 295, HL. Grant of a hereditary peerage by letters patent requires words of inheritance, whereas a writ of summons to the House of Lords, followed by taking a seat, enured to the heirs of the grantee's body without express words. In the latter case the writ had to be followed by taking a seat in Parliament, whereas in the former the title enured and descended in accordance with the grant, whether the grantee took his seat or not: 1 Bl Com (14th Edn) 400.

2 For this purpose Parliament means a Parliament consisting of lords spiritual and temporal and the elected representatives of counties, cities and boroughs: see **PARLIAMENT** vol 78 (2010) PARA 893. The earliest Parliament recognised to fall within this description is the Model Parliament of 1295, and at least one subsequent so-called Parliament, the Parliament of Lincoln held in 1300, has not been regarded as falling within this description: *St John Peerage Case* [1915] AC 282, HL (where the phrase 'plenum parlementum' is discussed); *Beauchamp Barony Case* [1925] AC 153, HL.

3 *Beauchamp Barony Case* [1925] AC 153, HL; *St John Peerage Case* [1915] AC 282, HL (and the cases there cited). As to evidence of creation of peerage see also PARA 856.

4 *De Wahull Peerage Case* (1892) cited in [1915] AC at 291.

5 *St John Peerage Case* [1915] AC 282 at 305, HL, per Lord Parker of Waddington; approved in the *Beauchamp Barony Case* [1925] AC 153, HL.

6 *Beauchamp Barony Case* [1925] AC 153, HL. As to evidence of sitting generally see PARA 856.

7 See Palmer's Peerage Law in England 129-132; Pike's Constitutional History of the House of Lords 273. In one case a son was summoned in respect of his mother's barony: *Montacute and Monthermer Peerages Case* (1874) LR 7 HL 305; *Pole of Montague Peerage Case* (1929). In former times, but not since the reign of Henry VIII, writs were also issued in right of the wife: see Palmer's Peerage Law in England 133-136. A writ of acceleration was last used in 1992 when Viscount Cranbourne was issued with a writ of summons in acceleration to a minor barony held by his father, the Marquis of Salisbury.

8 House of Lords Act 1999 s 1; and see PARA 825.

9 See the House of Lords Act 1999 s 2; and PARA 825. Any writ of summons issued for the Parliament in session when the House of Lords Act 1999 was passed in right of a hereditary peerage had no effect after that session unless it was issued to a person who, at the end of the session, was specifically excepted: House of Lords Act 1999 s 5(2).

10 This barony is referred to in the *Le Power and Coroghmore Barony Case* (1921) Report of Attorney General 5, 6.

Halsbury's Laws of England/PEERAGES AND DIGNITIES (VOLUME 79 (2008) 5TH EDITION)/2. THE PEERAGE/(3) PRIVILEGES AND PRECEDENCE/(i) Privileges/823. Privilege of sitting and voting in Parliament.

(3) PRIVILEGES AND PRECEDENCE

(i) Privileges

823. Privilege of sitting and voting in Parliament.

The most important privilege of a peer is to sit and vote in Parliament[1]. However, whilst it is a privilege, membership of the House of Lords is not an automatic or universal right for all peers[2]. For those who are entitled, though, it is not only a privilege, but a duty, for Lords of Parliament must attend the sittings of the House of Lords or, if they cannot do so, obtain leave of absence[3].

However, as from a day to be appointed a member of the House of Lords will, while he holds any disqualifying judicial office, be disqualified for sitting or voting in the House of Lords[4] (but is not disqualified for receiving a writ of summons to attend the House)[5].

1 *Norfolk Earldom Case* [1907] AC 10 at 17, HL.

2 The privilege extends to life peers, Lords of Appeal in Ordinary and elected hereditary peers (of any class of peerage save those who are only peers of Ireland): see PARA 825 note 1. As to the restrictions on sitting in the House of Lords see PARAS 824-825.

3 HL Standing Orders (2007) (Public Business) no 23(1). A lord who is unable to attend regularly need not apply for leave of absence if he proposes to attend as often as he reasonably can: no 23(1).

4 Constitutional Reform Act 2005 s 137(3), (4) (not yet in force). At the date at which this volume states the law no day had been appointed for the coming into force of this provision. As to disqualifying judicial office see the House of Commons Disqualification Act 1975 Sch 1 Pt 1 and the Northern Ireland Assembly Disqualification Act 1975 Sch 1 Pt 1.

5 Constitutional Reform Act 2005 s 137(5) (not yet in force: see note 4).

UPDATE

823 Privilege of sitting and voting in Parliament

NOTES 4, 5--Appointed day is 1 October 2009: SI 2009/1604.

Halsbury's Laws of England/PEERAGES AND DIGNITIES (VOLUME 79 (2008) 5TH EDITION)/2. THE PEERAGE/(3) PRIVILEGES AND PRECEDENCE/(i) Privileges/824. Entitlement of life peers to sit and vote in the House of Lords.

824. Entitlement of life peers to sit and vote in the House of Lords.

Life peers and Lords of Appeal in Ordinary are entitled to receive writs of summons to attend the House of Lords and sit and vote accordingly[1]. This does not, however, entitle a person to receive a writ of summons to attend the House of Lords, or to sit and vote in that House, at any time when disqualified by law[2]. The disqualifications are:

3 (1) persons under the age of 21 years[3];
4 (2) aliens[4];
5 (3) bankrupts[5];
6 (4) being convicted of treason or certain other offences, until pardoned, or until completion of sentence[6];
7 (5) holders of disqualifying judicial office[7].

1 Life Peerages Act 1958 s 1(2); Appellate Jurisdiction Act 1876 s 6. As from a day to be appointed, the Appellate Jurisdiction Act 1876 s 6 is repealed by the Constitutional Reform Act 2005 ss 145, 146, Sch 17 Pt 2 para 9, Sch 18 Pt 5. At the date at which this volume states the law no such day had been appointed. As to the prospective disqualification of members of the House of Lords for sitting or voting while holding judicial office see the Constitutional Reform Act 2005 s 137 (not yet in force); and PARA 823 note 4.

2 Life Peerages Act 1958 s 1(4).

3 HL Standing Orders (2007) (Public Business) no 2; and see **PARLIAMENT** vol 78 (2010) PARA 840.

4 See the Act of Settlement (1700 or 1701) s 3 (amended by the British Nationality Act 1981 s 52(6), Sch 7); and **BRITISH NATIONALITY, IMMIGRATION AND ASYLUM**; **PARLIAMENT** vol 78 (2010) PARA 840.

5 See the Insolvency Act 1986 ss 426A, 427(1), (3); and **BANKRUPTCY AND INDIVIDUAL INSOLVENCY** vol 3(2) (2002 Reissue) PARA 697; **PARLIAMENT** vol 78 (2010) PARA 840.

6 See the Forfeiture Act 1870 s 2; and **CRIMINAL LAW, EVIDENCE AND PROCEDURE** vol 11(4) (2006 Reissue) PARA 1818; **PARLIAMENT** vol 78 (2010) PARA 840.

7 See note 1; and PARA 823.

UPDATE

824 Entitlement of life peers to sit and vote in the House of Lords

NOTE 1--Constitutional Reform Act 2005 s 137, Sch 17 para 9, Sch 18 Pt 5 in force on 1 October 2009: SI 2009/1604.

Halsbury's Laws of England/PEERAGES AND DIGNITIES (VOLUME 79 (2008) 5TH EDITION)/2. THE PEERAGE/(3) PRIVILEGES AND PRECEDENCE/(i) Privileges/825. Eligibility of certain hereditary peers to sit and vote in the House of Lords.

825. Eligibility of certain hereditary peers to sit and vote in the House of Lords.

Until 1999 holders of hereditary peerages were automatically entitled to a seat in the House of Lords[1]. The House of Lords Act 1999 introduced the rule that no-one is to be a member of the House of Lords by virtue of a hereditary peerage[2]. At any one time 90 hereditary peers are excepted from the rule[3]. Once excepted, a hereditary peer continues to be so throughout his life (until an Act of Parliament provides to the contrary)[4].

The excepted hereditary peers consist of the following categories:

8 (1) two peers elected[5] by the Labour hereditary peers; 42 peers elected by the Conservative hereditary peers; three peers elected by the Liberal Democrat hereditary peers; 28 peers elected by the cross-bench hereditary peers;

9 (2) 15 peers, elected by the whole House, from among those ready to serve as Deputy Speakers or in any other office as the House may require; and

10 (3) any peer holding the office of Earl Marshal or performing the office of Lord Great Chamberlain[6].

Standing Orders make the following provision for filling vacancies among the people excepted from the rule[7]. In the event of the death of a hereditary peer excepted under category (1) only the excepted hereditary peers in the group in which the vacancy has occurred are entitled to vote[8]. In the event of the death of a hereditary peer excepted under category (2) the whole House is entitled to vote[9]. The Clerk of the Parliaments maintains, and publishes annually, a register of hereditary peers (other than peers of Ireland) who wish to stand in any by-election[10]. By-elections are conducted in accordance with arrangements made by the Clerk of the Parliaments and must take place within three months of a vacancy occurring[11]. In the event of a tie between two or more candidates the matter (if not resolved by the electoral arrangements adopted by the House) is decided by the drawing of lots[12]. The Clerk of the Parliaments may

refer any question concerning the propriety of the electoral process to the Committee for Privileges[13].

Any question whether a person is excepted from the rule is decided by the Clerk of the Parliaments, whose certificate is conclusive[14].

Hereditary peers elected under the procedure described above are entitled to sit and vote in the House of Lords provided they are not disqualified for membership of the House[15].

1 This applied to peers of England, Great Britain and the United Kingdom: see PARA 805. Peers of Scotland were also entitled to sit in the House of Lords: see the Peerage Act 1963 s 4. Peers of Ireland were excluded (see the Union with Ireland Act 1800 art 4; *Robinson v Lord Rokeby* (1803) 8 Ves 601; *Irish Peer Case* (1806) Russ & Ry 117), but the Union with Ireland Act 1800 provided for their representation in the Parliament of the United Kingdom by 28 elected representative peers of Ireland (Union with Ireland Act 1800 art 4). However, the right to elect representative peers ceased to be effective on the passing of the Irish Free State (Agreement) Act 1922 (see *Petition of the Earl of Antrim* [1967] 1 AC 691, [1966] 3 WLR 1141, HL). No election was held after that, and the last representative peer of Ireland died in 1961: see **PARLIAMENT** vol 78 (2010) PARA 834.

2 House of Lords Act 1999 s 1. Section 1 does not apply in relation to anyone excepted from it by or in accordance with Standing Orders of the House: House of Lords Act 1999 s 2(1).

3 House of Lords Act 1999 s 2(2), (5). Anyone excepted as holder of the office of Earl Marshal, or as performing the office of Lord Great Chamberlain, does not count towards that limit: s 2(2).

4 House of Lords Act 1999 s 2(3).

5 Elections are conducted in accordance with arrangements made by the Clerk of the Parliaments: see HL Standing Orders (2007) (Public Business) no 9(3). As to the requirements of registration see HL Standing Orders (2007) (Public Business) no 9(4).

6 HL Standing Orders (2007) (Public Business) no 9(1), (2). See note 3.

7 House of Lords Act 1999 s 2(4); HL Standing Orders (2007) (Public Business) nos 9(7), (8), 10(1), (4).

8 HL Standing Orders (2007) (Public Business) no 10(2), (4).

9 HL Standing Orders (2007) (Public Business) no 10(3), (4).

10 HL Standing Orders (2007) (Public Business) no 10(5). Any hereditary peer (not previously in receipt of a writ of summons) who wishes to be included in this register maintained by the Clerk of the Parliaments must petition the House and any such petition is referred to the Lord Chancellor to consider and report upon whether such peer has established his right to be included in the register: HL Standing Orders (2007) (Public Business) no 11.

11 HL Standing Orders (2007) (Public Business) no 10(6).

12 HL Standing Orders (2007) (Public Business) nos 9(5), 10(7).

13 HL Standing Orders (2007) (Public Business) nos 9(6), 10(7).

14 House of Lords Act 1999 s 2(6).

15 See PARA 824.

Halsbury's Laws of England/PEERAGES AND DIGNITIES (VOLUME 79 (2008) 5TH EDITION)/2. THE PEERAGE/(3) PRIVILEGES AND PRECEDENCE/(i) Privileges/826. Non-excepted hereditary peers entitled to vote and sit in the House of Commons.

826. Non-excepted hereditary peers entitled to vote and sit in the House of Commons.

The holder of a hereditary peerage is not disqualified by virtue of that peerage for voting at elections to the House of Commons or being or being elected as a member of that House[1]. This does not apply to any peer who is a member of the House of Lords[2].

1 House of Lords Act 1999 s 3(1). Peers of Ireland were qualified to be or be elected as a member of the House of Commons: see the Union with Ireland Act 1800 art 4.

2 Ie any hereditary peer who is excepted from the operation of the House of Lords Act 1999 s 1 by virtue of s 2 (see PARA 825): s 3(2).

Halsbury's Laws of England/PEERAGES AND DIGNITIES (VOLUME 79 (2008) 5TH EDITION)/2. THE PEERAGE/(3) PRIVILEGES AND PRECEDENCE/(i) Privileges/827. Peeresses.

827. Peeresses.

Peeresses in their own right and peeresses by marriage have the same rights and privileges as peers except, in the case of peeresses by marriage, that of sitting and voting in Parliament[1]. Although a peeress by marriage loses the rights and privileges if she marries a commoner, a peeress in her own right in the same event retains them[2]. A woman on whom a life peerage has been conferred has the right to sit and vote in Parliament[3].

1 See the Peerage Act 1963 s 6.

2 *Acton's Case* (1603) 4 Co Rep 117a; *Countess of Rutland's Case* (1606) 6 Co Rep 52b; Co Litt 16b; *Countess Rivers' Case* (1650) Sty 252; *Anon* (1676) 1 Vent 298; cf *Earl Cowley v Countess Cowley* [1901] AC 450, HL; 1 Bl Com (14th Edn) 401; HL Standing Orders (2007) (Public Business) no 84.

3 See the Life Peerages Act 1958 s 1(2)(b), (3).

Halsbury's Laws of England/PEERAGES AND DIGNITIES (VOLUME 79 (2008) 5TH EDITION)/2. THE PEERAGE/(3) PRIVILEGES AND PRECEDENCE/(i) Privileges/828. Privileges as regards legal proceedings.

828. Privileges as regards legal proceedings.

A peer is at all times free from arrest in civil cases[1]. The distinction between civil and criminal process depends upon whether the arrest is to punish a breach of the law or merely to compel performance of a civil obligation[2]. Process for contempt of court may be served against him only if the contempt is by its nature or by its incidents criminal[3]. Hence a peer ought not to be appointed a receiver[4]. A court order may, however, be enforced against a peer by sequestration[5].

Where a party to legal proceedings desires to plead privilege of Parliament on account of peerage, he must assert that he is a peer and a member of the House of Lords; if he merely alleges facts on which the jury may find that he is a peer, he will be treated as being a commoner and will be estopped by judgment against him from setting up his peerage[6]. It has been held that, if the peerage is denied by the other side, the party pleading peerage must state in his reply how he claims the dignity[7].

In legal proceedings a peer of Ireland should be described by his proper name with the addition of his title and degree, but without the expression 'commonly called', which is used only with courtesy titles of children of dukes, marquesses, earls, viscounts or barons[8].

A peer who is a claimant and out of the jurisdiction must give the usual security for costs[9]. The former privilege of a peer to be tried by his peers in cases of treason, felony or misprision of either has been abolished[10]; and criminal proceedings against peers now follow the same course as for any other subject[11].

A peer may act as advocate in civil and criminal causes, and in appeals before the House of Lords (including its Appellate and Appeal Committees), but not otherwise before committees of either House of Parliament[12].

1 *Countess of Shrewsbury's Case* (1612) 12 Co Rep 94, PC; *Foster v Jackson* (1615) Hob 52 at 61; *Couche v Lord Arundel* (1802) 3 East 127. See also **PARLIAMENT** vol 78 (2010) PARA 1085. This privilege extends to Scottish and Irish peers: *Davis v Lord Rendlesham* (1817) 7 Taunt 679; *Storey v Birmingham* (1823) 3 Dow & Ry KB 488; *Coates v Lord Hawarden* (1827) 7 B & C 388; *Digby v Lord Stirling* (1831) 8 Bing 55.

2 *Stourton v Stourton* [1963] P 302, [1963] 1 All ER 606 (attachment).

3 *Wellesley v Duke of Beaufort, Long Wellesley's Case* (1831) 2 Russ & M 639 at 665; *Stourton v Stourton* [1963] P 302, [1963] 1 All ER 606. See also **CONTEMPT OF COURT** vol 9(1) (Reissue) PARA 519.

4 *A-G v Gee* (1813) 2 Ves & B 208. See also **RECEIVERS** vol 39(2) (Reissue) PARA 350.

5 *Pheasant v Pheasant* (1670) 2 Vent 340n; *Eyre v Countess of Shaftsbury* (1722) 2 P Wms 103 at 110. As to sequestration see **CIVIL PROCEDURE** vol 12 (2009) PARA 1380.

6 *Digby v Alexander* (1832) 9 Bing 412 at 414. Note that a hereditary peerage no longer confers an automatic right to sit in the House of Lords: see PARA 825.

7 *Earl of Stirling v Clayton* (1832) 1 Cr & M 241.

8 *R v Graham* (1791) 2 Leach 547. In general, a peer should be described by his first name and his title in documents; neither his family name nor his residence should be stated.

9 *Lord Aldborough v Burton* (1834) 2 My & K 401. As to security for costs generally see **CIVIL PROCEDURE** vol 11 (2009) PARA 745 et seq.

10 Criminal Justice Act 1948 s 30 (1) (repealed by the Criminal Law Act 1967 s 10(2), Sch 3 Pt I; Statute Law (Repeals) Act 1977 s 1(1), Sch 1 Pt IV).

11 See **CRIMINAL LAW, EVIDENCE AND PROCEDURE**.

12 See **LEGAL PROFESSIONS** vol 66 (2009) PARA 1113; **PARLIAMENT** vol 34 (Reissue) PARA 896.

Halsbury's Laws of England/PEERAGES AND DIGNITIES (VOLUME 79 (2008) 5TH EDITION)/2. THE PEERAGE/(3) PRIVILEGES AND PRECEDENCE/(ii) Precedence/829. In general.

(ii) Precedence

829. In general.

The House of Lords Precedence Act 1539 regulates the precedence of peers and certain office holders in Parliament[1], but in practice peers today arrange themselves in the Chamber of the House by party group rather than degree of peerage and rank. Outside Parliament, precedence is determined by royal warrant[2], building on statute and letters patent of earlier ages. The Lord Chamberlain no longer publishes consolidated scales of precedence[3], but various texts replicate the tables[4].

1 See the House of Lords Precedence Act 1539 ss 1-8.

2 See eg Royal Warrant dated 4 July 2006 (which established the rank and precedence of the Lord Speaker of the House of Lords as being immediately after that of the Speaker of the House of Commons).

3 Such scales are different in England and Wales and Scotland and for men and women.

4 See eg D G Squibb *Order of Precedence in England and Wales* (1981).

Halsbury's Laws of England/PEERAGES AND DIGNITIES (VOLUME 79 (2008) 5TH EDITION)/2. THE PEERAGE/(4) EXTINCTION OR SUSPENSION OF A PEERAGE/(i) Extinction of a Life Peerage/830. Extinction of life peerage.

(4) EXTINCTION OR SUSPENSION OF A PEERAGE

(i) Extinction of a Life Peerage

830. Extinction of life peerage.

Life peerages become extinct on the death of the holder[1].

1 See the Appellate Jurisdiction Act 1876 s 6; Life Peerages Act 1958 s 1(2)(a); and PARAS 807, 808.

Halsbury's Laws of England/PEERAGES AND DIGNITIES (VOLUME 79 (2008) 5TH EDITION)/2. THE PEERAGE/(4) EXTINCTION OR SUSPENSION OF A PEERAGE/(ii) Extinction or Suspension of a Hereditary Peerage/831. Extinction of hereditary peerage by failure of issue.

(ii) Extinction or Suspension of a Hereditary Peerage

831. Extinction of hereditary peerage by failure of issue.

On failure of the heirs indicated at the creation of a hereditary peerage the peerage becomes extinct[1].

1 *Knollys' Case* (1694) Marcham's Report 464, sub nom *R v Earl of Banbury* Skin 517 (where the House of Lords held that the first Earl of Banbury left no sons, and consequently that the earldom became extinct by failure of issue).

Halsbury's Laws of England/PEERAGES AND DIGNITIES (VOLUME 79 (2008) 5TH EDITION)/2. THE PEERAGE/(4) EXTINCTION OR SUSPENSION OF A PEERAGE/(ii) Extinction or Suspension of a Hereditary Peerage/832. Abeyance.

832. Abeyance.

The doctrine of abeyance relates not to the extinction of a peerage[1], but to the state of suspense into which a hereditary peerage falls when co-heirship occurs in the succession. Hitherto the doctrine of abeyance has been accepted by the House of Lords only in respect of baronies in fee, that is, baronies created by writ of summons and sitting[2]. Two claims have been made in respect of earldoms in fee, but no direct decision was given on the point of

abeyance[3]. Abeyance does not apply to Scottish peerages[4]; it is not known before the seventeenth century, and it was not fully developed until the nineteenth century[5].

When the owner of a fief died leaving no male issue but more than one daughter, his land fell to his daughters in equal shares, although for a landed barony it was held that the eldest daughter must have the chief residence where seisin was taken for the whole[6].

A dignity being impartible and all the daughters having equal rights in it, the peerage right is held to be latent in all the co-heirs[7].

1 See PARA 831.

2 See PARA 822.

3 The point was expressly left open in the *Norfolk Earldom Case* [1907] AC 10, HL, and in the *Oxford Earldom Case* (1912). See also the Complete Peerage by GEC (1910 Edn) vol IV App H 708 et seq. The earldoms of Arlington (1672) and Cromartie (1861) were both created by letters patent limiting them to the grantee and the heirs of his body. Neither has yet come before the House of Lords for decision. An abeyance in the earldom of Cromartie was terminated by the Crown solely on the report of the Attorney General, by letters patent dated 25 February 1895 granting the title to a woman who held it, as the Countess of Cromartie, until her death in 1962, when she was succeeded by the 4th Earl of Cromartie. Both the Arlington and Cromartie patents contain viscounties with a similar limitation to heirs of the body of the grantee.

As to the procedure for a petition to claim a peerage in abeyance see PARA 848.

4 *Herries Peerage Case* (1858) LR 2 Sc & Div 258, HL.

5 The law of abeyance, as distinguished from co-heirship, first enunciated in the seventeenth century, is set forth in the letters patent dated 7 May 1663, and in the Act of Parliament confirming the same, creating Mary, Countess of Kent, to be Baroness Lucas of Crudwell, which provided that, if at any time after the death of the said Mary, and in default of heirs male of her body, begotten by the Earl of Kent, there should be more persons than one who should be co-heirs of her body, so that the King or his heirs might declare which of them should have the dignity or otherwise, the dignity should be suspended or extinguished, then, nevertheless, the dignity should not be suspended or extinguished, but should go and be held and enjoyed from time to time by such of the said co-heirs as by course of descent and the common law of the realm should be inheritable in other entire and indivisible inheritances as, namely, an office of honour and public trust, or a castle for the necessary defence of the realm, and the like in case such inheritance had been given and limited to the said countess and the heirs of her body by the said earl begotten: *Lucas Peerage Case* (1907). See also the Report on Peerages in Abeyance (1927) Evidence 48 et seq and the documents accompanying it.

6 2 Pollock and Maitland's History of English Law (2nd Edn) 274, 275, citing Bracton.

7 It was formerly held to revert or be escheated to the fountain of honour, ie the Crown, but the law was subsequently ascertained to be that a peerage in co-heirs was not extinguished, and that the Sovereign possessed it only so long as co-heirship existed; so that, if at any future time there should be but one heir, the right revived and the dignity was said to have been in abeyance: *Willoughby de Broke Barony Case* (1695) Cruise on Dignities (2nd Edn) c 5 s 62; Collins's Baronies by Writ (1734 Edn) 321; sub nom *Verney's Case* Skin 432, HL. See also the *Lucas Peerage Case* (1907).

833. Termination of abeyance.

The Crown is not obliged to terminate an abeyance[1]. The Crown can terminate an abeyance in favour of any co-heir[2], but may not grant the dignity to anyone but a co-heir[3]. Certain limitations on the power to call peerages out of abeyance have been accepted by the Crown. The most important of these limitations are:

11 (1) that no abeyance is to be terminated after the lapse of a century; and
12 (2) that no petition is to proceed where the petitioner represents less than one-third of the entire dignity unless he is a child of the last holder[4].

In the case of a commoner, the termination of an abeyance in a barony is effected by writ of summons. Formerly, before women could receive a writ of summons, this was done by letters patent if the petitioner was a woman. In the case of a person already holding a higher dignity, the lesser is, it seems, confirmed to him by the Sovereign's declaration under the Great Seal[5]. The Sovereign cannot extinguish the title when in abeyance or dispose of it to a stranger[6], and, when only one of the co-heirs remains, that heir is entitled to the dignity[7].

1 As to abeyance see PARA 832. As to the procedure for a petition to claim a peerage in abeyance see PARA 848.

2 Com Dig, Dignity (C 3); and see **CONSTITUTIONAL LAW AND HUMAN RIGHTS** vol 8(2) (Reissue) PARA 215. A claim to a peerage in abeyance is made by petitioning the Crown: see PARA 848.

3 See the declaration in the patent *Lucas Peerage Case* (1907).

4 See the Report on Peerages in Abeyance (1927) 11.

5 Cruise on Dignities (2nd Edn) c 5 s 43. For an example of letters patent determining an abeyance in favour of a woman see the *Strange of Knokin and Stanley Baronies Case* (1920) Minutes of Evidence, App 128.

6 Cruise on Dignities (2nd Edn) c 5 s 37.

7 Cruise on Dignities (2nd Edn) c 5 s 56; *Lord Willoughby de Broke Barony Case* (1695) Cruise on Dignities (2nd Edn) c 5 s 62; Collins's Baronies by Writ (1734 Edn) 321; sub nom *Verney's Case* Skin 432, HL.

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834. Merger.

If the holder of a peerage succeeds to the Crown, the dignity merges in the Crown and can only be revived or recreated by a new grant[1].

A previous title does not merge in a new grant. Thus, a barony by writ does not merge in a new grant by letters patent[2], and a lesser title does not merge in a greater one subsequently united in the same person by grant or otherwise[3], since, even if the greater title becomes extinct through failure of inheritable blood under the particular limitations of the grant, the lesser may continue as originally limited and is not necessarily extinguished with the greater[4].

1 See *Lord Oranmore's Case* (1848) 2 HL Cas 910; cf the *Buckhurst Peerage Case* (1876) 2 App Cas 1 at 28, HL, per Lord Cairns LC. The effect of the Sovereign becoming co-heir to a barony by writ in abeyance has never been argued, but it would be within the Crown's right to terminate the abeyance in its own favour. As to the titles of the Crown see **CROWN AND ROYAL FAMILY**. Merger might arise if the Sovereign terminated the abeyance in her own favour. As to abeyance see PARAS 832-833, 848.

2 *Lord De la Warre's Case* (1597) 11 Co Rep 1a at 1b; *Willoughby de Broke Barony Case* (1695) Collins's Baronies by Writ (1734 Edn) 321 at 325.

3 See the *Grey de Ruthyn Case* (1640) Collins's Baronies by Writ (1734 Edn) 195, HL; Cruise on Dignities (2nd Edn) c 4 s 58; *Roos Barony Case* (1666) Collins's Baronies by Writ (1734 Edn) 261, HL; and *Fitzwalter's Case* (1669) Collins's Baronies by Writ (1734 Edn) 268 at 286.

4 See note 3.

Halsbury's Laws of England/PEERAGES AND DIGNITIES (VOLUME 79 (2008) 5TH EDITION)/2. THE PEERAGE/(4) EXTINCTION OR SUSPENSION OF A PEERAGE/(ii) Extinction or Suspension of a Hereditary Peerage/835. Resignation and surrender.

835. Resignation and surrender.

A peer of England, Ireland, Great Britain or the United Kingdom[1] cannot surrender, resign[2] or extinguish his dignity by fine, grant or any other conveyance to the Crown. A Scottish peer could resign his dignity into the hands of the Crown in order to extinguish it, or, which was usual, resign for a charter of novodamus altering the course of descent[3].

1 See PARA 805.

2 *Norfolk Earldom Case* [1907] AC 10, HL; *Re Parliamentary Election for Bristol South East* [1964] 2 QB 257, [1961] 3 All ER 354, Election Ct. Before the seventeenth century it was supposed that a peer had power to surrender or resign, and some earls did in fact surrender their earldoms. At the time the validity of these surrenders was never questioned. In 1626 the then claim to the earldom of Oxford was submitted for the opinion of the judges. In giving his opinion, Dodridge J said in reference to a peerage, 'he cannot alien or give away this interest because it is a personal dignity annexed to the posterity and fixed in the blood': *Willoughby of Eresby and Oxford Case* (1626) W Jo 96 at 123, HL. In the *Grey de Ruthyn Case* (1640) Collins's Baronies by Writ (1734 Edn) 195 at 256 the House of Lords resolved 'That no person that hath any Honour in him, and a Peer of this Realm, may alien or transfer the Honour to any other person' and 'That no Peer of this Realm can drown, or extinguish his honour (but that it descend to his descendants) neither by surrender, grant, fine, nor any other conveyance to the King'. A similar declaration was made in *R v Viscount Purbeck* (1678) Show Parl Cas 1 HL; and see the Report on the Dignity of a Peer of the Realm (1829 reprint) vol II pp 25, 26. These authorities were reviewed in the *Norfolk Earldom Case* [1907] AC 10, HL, and strictly followed, a surrender in 1302 of an earldom by its then holder being declared invalid. The same earldom had been regranted in 1312 and from this root the 1907 claimant derived his title, but it was held that the regrant was invalid since the surrender in 1302 was illegal. A peer cannot 'oust and kill the rights of those entitled in remainder': *Norfolk Earldom Case* at 14 per Lord Ashbourne.

3 The power seems to have been abolished by the Union with Scotland Act 1706.

Halsbury's Laws of England/PEERAGES AND DIGNITIES (VOLUME 79 (2008) 5TH EDITION)/2. THE PEERAGE/(4) EXTINCTION OR SUSPENSION OF A PEERAGE/(ii) Extinction or Suspension of a Hereditary Peerage/836. Disclaimer.

836. Disclaimer.

By an instrument of disclaimer delivered to the Lord Chancellor, any person who succeeds to a hereditary peerage of England, Scotland, Great Britain or the United Kingdom on or after 31 May 1963[1] may disclaim that peerage for his life[2]. Any such instrument of disclaimer must be delivered within the period of 12 months beginning with the day on which the person succeeds to that peerage[3]. An instrument of disclaimer may not be delivered by a person who is an excepted hereditary peer entitled to sit in the House of Lords[4].

1 Ie the commencement date of the Peerage Act 1963. Section 1 also applies to a person who succeeded to a peerage before 31 May 1963, but in that case the period within which an instrument of disclaimer could be delivered was 12 months beginning with that date or, if the person was under 21 years of age, 12 months beginning with the day on which he attained that age: s 1(3)(a). The first hereditary peer to disclaim his title in this way was Anthony Wedgwood Benn (formerly Viscount Stansgate).

2 Peerage Act 1963 s 1(1). As to the form, delivery, certification and registration of instruments see s 1(5), Sch 1.

3 Peerage Act 1963 s 1(2). If the person is under the age of 21 years when he succeeds, the period of 12 months begins with the day on which he attains that age: s 1(2). In reckoning the period, no account is to be taken of any time during which that person is shown to the satisfaction of the Lord Chancellor to have been subject to any infirmity of body or mind rendering him incapable of exercising or determining whether to exercise his rights: s 1(4).

4 Peerage Act 1963 s 1(2) (amended by the House of Lords Act 1999 s 4(1), Sch 1 para 1). The reference in the text to an excepted hereditary peer is a reference to any person who is excepted from the House of Lords Act 1999 s 1 by virtue of s 2: see PARA 825.

Halsbury's Laws of England/PEERAGES AND DIGNITIES (VOLUME 79 (2008) 5TH EDITION)/2. THE PEERAGE/(4) EXTINCTION OR SUSPENSION OF A PEERAGE/(ii) Extinction or Suspension of a Hereditary Peerage/837. Effects of disclaimer.

837. Effects of disclaimer.

The disclaimer of a peerage by any person under the Peerage Act 1963 is irrevocable[1]. From the date on which it is delivered it operates to divest that person, and, if he is married, his wife, of all right or interest to or in the peerage, and all attached titles, rights, offices, privileges and precedence[2]. The disclaimer also operates to relieve the person of all obligations and disabilities of the peerage[3]. The disclaimer does not, however, accelerate the succession to that peerage nor does it affect its devolution on his death[4].

Where a peerage is disclaimed under the Peerage Act 1963, no other hereditary peerage may be conferred upon the person by whom it is disclaimed[5]. The disclaimer of a peerage does not affect any right, interest or power, whether arising before or after the disclaimer, of the person by whom the peerage is disclaimed, or of any other person, to, in or over any estates or other property limited or settled to devolve with that peerage[6].

1 Peerage Act 1963 s 3(1).

2 Peerage Act 1963 s 3(1)(a).

3 Peerage Act 1963 s 3(1)(b) (amended by the House of Lords Act 1999 s 4(2), Sch 2).

4 Peerage Act 1963 s 3(1).

5 Peerage Act 1963 s 3(2) (amended by the House of Lords Act 1999 s 4(2), Sch 2).

6 Peerage Act 1963 s 3(3).

Halsbury's Laws of England/PEERAGES AND DIGNITIES (VOLUME 79 (2008) 5TH EDITION)/2. THE PEERAGE/(4) EXTINCTION OR SUSPENSION OF A PEERAGE/(ii) Extinction or Suspension of a Hereditary Peerage/838. Forfeiture.

838. Forfeiture.

Forfeiture of all civil rights follows upon attainder[1]. Dignities held by the attainted person, or to which any person claiming through him becomes heir, escheat to the Crown and the blood of the attainted person is 'corrupted', so that he cannot subsequently inherit, nor transmit to his heirs the capacity to inherit, any dignity[2].

The barony of an attainted person was not preserved by his son's having been summoned to Parliament in his father's barony prior to the attainder[3].

If, however, an attainted person dies without issue before becoming heir to a dignity, the succession to the dignity is not affected[4], nor is the inheritance of a dignity under a special remainder barred by the attainder of an heir under the prior limitation[5].

On the attainder of one co-heir to a barony in abeyance, the dignity does not escheat to the Crown; the title of the other co-heir or co-heirs is not affected[6].

Forfeiture without attainder has been imposed by Act of Parliament[7].

1 Attainder was the extinction of civil rights and powers which formerly resulted from a judgment of death or outlawry against a person convicted of treason or felony. Persons can even be attainted by Act of Parliament after death: 4 Bl Com (14th Edn) 380; Co Litt 390b; 1 Chitty's Criminal Law (2nd Edn) 723. A judgment of outlawry standing in the way of a claim to a dormant barony, although clearly erroneous, cannot be overlooked, but must be reversed: *Wharton Peerage Case* (1845) 12 Cl & Fin 295, HL. As to bills of attainder see **COURTS** vol 10 (Reissue) PARA 354.

2 2 Bl Com (14th Edn) 253; 4 Bl Com (14th Edn) 380; Chitty's Criminal Law (2nd Edn) 727 et seq.

3 *Montacute and Monthermer Peerages Case* (1874) LR 7 HL 305 at 315 per Lord Cairns LC and at 316 per Lord Hatherley.

4 *Perth Earldom Case* (1848) 2 HL Cas 865. See also the *Southesk Earldom Case* (1848) 2 HL Cas 908. For example, if A has three sons, B, C and D, the line of B remains pure, the line of C becomes corrupt through attainder of a descendant, and the line of D remains pure. The issue of B and C becomes extinct, and the descendant of D becomes heir of the person ennobled. If in fact any descendant of C became heir, all the descendants of D are barred. The chief authority for this statement of the law is the *Airlie Earldom Case* (1813) Cruise on Dignities (2nd Edn) c 4 s 86.

5 By the terms of the grant, enjoyment by the second grantee is made to depend upon a future event. Both creations are emanations of the same royal prerogative, perfectly distinct and independent of each other; therefore the forfeiture of the first by treason does not prevent the second from arising and taking effect at the time appointed: *Somerset Dukedom Case* (1750) 2 Eden 379; Report on the Dignity of a Peer of the Realm (1829 reprint) vol II p 57. See also the *Somerset Dukedom Case* (1926) Minutes of Proceedings 218.

6 *Braye Peerage Case* (1839) 6 Cl & Fin 757, HL; *Camoys Peerage Case* (1839) 6 Cl & Fin 789, HL; *Beaumont Peerage Case* (1840) 6 Cl & Fin 868, HL. As to abeyance see PARAS 832-833, 848.

7 26 Hen 8 c 13 (High Treason) (1534) (repealed).

Halsbury's Laws of England/PEERAGES AND DIGNITIES (VOLUME 79 (2008) 5TH EDITION)/2. THE PEERAGE/(4) EXTINCTION OR SUSPENSION OF A PEERAGE/(ii) Extinction or Suspension of a Hereditary Peerage/839. Restitution of blood.

839. Restitution of blood.

The effect of an attainder[1] can only be removed by statute. In the case of attainder by statute, this takes the form of a repealing Act. Restitution of blood does not revive a forfeited dignity. It does, however, enable the attainted person or his heirs subsequently to inherit a dignity other than the one which has been forfeited[2].

1 As to attainder see PARA 838 note 1.

2 *Montacute and Monthermer Peerages Case* (1874) LR 7 HL 305.

Halsbury's Laws of England/PEERAGES AND DIGNITIES (VOLUME 79 (2008) 5TH EDITION)/2. THE PEERAGE/(4) EXTINCTION OR SUSPENSION OF A PEERAGE/(iii) Deprivation of Peerage/840. Deprivation of peerage.

(iii) Deprivation of Peerage

840. Deprivation of peerage.

No peer can be deprived of peerage except by or under the authority of[1] an Act of Parliament[2].

1 By the Titles Deprivation Act 1917 any peers who during the 1914-18 war bore arms against the Crown or adhered to the enemy had their actions subjected to inquiry by a committee appointed under the Act. The committee's report was then referred to both Houses of Parliament and the Crown. The Dukes of Albany, Cumberland and Brunswick and Viscount Taaffe were so dealt with and, by Order in Council dated 28 March 1919, SR & O 1919/475 (spent), their names were struck off the Roll of the House of Lords and they were deprived of their titles. This deprivation is absolute for the individual, but his successor may petition the Crown for restoration of the peerage. The petition is referable to the committee under the 1917 Act; and, if the committee is satisfied that no disability under the Act has been incurred by the petitioner and that he is well affected to the Crown, the Crown may direct a restoration of the peerage.

2 Com Dig, Dignity (E); *Earl of Waterford's Case* (1832) 6 Cl & Fin 133, HL; *Earl of Shrewsbury's Case* (1612) 12 Co Rep 106, PC; *R v Knowles* (1694) 12 Mod Rep 55. In the reign of Edward IV, George Nevill, Duke of Bedford, was degraded by Act of Parliament on account of poverty: 4 Co Inst 355; 1 Bl Com (14th Edn) 402. See also the *Earl of Shrewsbury's Case* at 108; *Viscount Purbeck's Case* (1678) Collins's Baronies by Writ (1734 Edn) 293 at 306. In such a case it seems that the title would be extinguished. There is an old authority to the effect that a peer may be degraded by the Sovereign if he wastes his estate, but this is no longer recognised as the law: see 1 Bl Com (14th Edn) 402.

Halsbury's Laws of England/PEERAGES AND DIGNITIES (VOLUME 79 (2008) 5TH EDITION)/2. THE PEERAGE/(5) CLAIMS TO HEREDITARY PEERAGES/(i) In general/841. Roll of the Peerage.

(5) CLAIMS TO HEREDITARY PEERAGES

(i) In general

841. Roll of the Peerage.

The Secretary of State[1], in consultation with Garter Principal King of Arms and Lord Lyon King of Arms[2], maintains a Roll of the Peerage as the official register in which those inheriting peerages seek inclusion as evidence of their dignity and rank[3]. The Roll has a broader scope than its predecessor, the parliamentary Roll of the Lords[4], in that it records peers of Ireland as well as those of England, Scotland, Great Britain and the United Kingdom[5]. The Roll is the authoritative list of the complete peerage and is evidence in cases of dispute[6]. Proof of succession is not required for any purpose of inheritance, but a peer who does not prove his succession is not entered on the Roll or entitled to be included on the Clerk of the Parliaments' register of candidates to stand in any by-election to fill a vacancy occurring by death among the ninety elected hereditary peers[7], nor is he entitled to any precedence attaching to his peerage or to be addressed or referred to by any title attaching to that peerage in any civil or military commission, letters patent or other official document[8]. Whether or not a person succeeding to a peerage intends to stand in a by-election for the House of Lords, he should apply to the Secretary of State for entry on the Roll; inclusion is not automatic[9].

1 Currently the Lord Chancellor and Secretary of State for Justice: see the Secretary of State for Justice Order 2007, SI 2007/2128; and **CONSTITUTIONAL LAW AND HUMAN RIGHTS**.

2 As to Kings of Arms see PARA 879.

3 See **COURTS** vol 10 (Reissue) PARA 357.

4 This was maintained by the Clerk of the Parliaments until the enactment of the House of Lords Act 1999 as a list of lords entitled to a writ of summons in order of precedence.

5 Royal Warrant dated 1 June 2004 para 9. As to the classification of peers see PARA 805.

6 Royal Warrant dated 1 June 2004 para 1.

7 HL Standing Orders (2007) (Public Business) no 11. See also PARA 845. As to the eligibility of elected hereditary peers to sit and vote in the House of Lords see PARA 825.

8 Royal Warrant dated 1 June 2004 para 3.

9 Application should be made through the Deputy Clerk of the Crown in Chancery, Crown Office, House of Lords, London. A person succeeding to a hereditary peerage should apply for inclusion on the Roll of the Peerage at the time of succession as, if a claim is not made on the death of the late peer, it becomes progressively more difficult and expensive for each succeeding generation to produce the required evidence to support a peerage claim. As to such evidence see PARA 855 et seq.

Halsbury's Laws of England/PEERAGES AND DIGNITIES (VOLUME 79 (2008) 5TH EDITION)/2. THE PEERAGE/(5) CLAIMS TO HEREDITARY PEERAGES/(ii) Jurisdiction/842. Jurisdiction of the Crown.

(ii) Jurisdiction

842. Jurisdiction of the Crown.

Jurisdiction to determine a claim to a dignity exists only in the Sovereign. The Sovereign has in fact at various periods referred claims to different authorities, such as the Lord Treasurer of England and the Earl Marshal[1]. A question of dignity or honour cannot be tried by a court of law[2]. In practice all claims of any difficulty are now referred to the House of Lords; the House then refers them to the Committee for Privileges[3].

1 See Squibb's High Court of Chivalry 159, 160.

2 *Earl Cowley v Countess Cowley* [1901] AC 450, HL. See also *Re Parliamentary Election for Bristol South East* [1964] 2 QB 257, [1961] 3 All ER 354, Election Ct, where the matter in issue was not whether the respondent had succeeded to a peerage, but whether he was thereby disqualified from sitting in the House of Commons, notwithstanding that he had not applied for or received a writ of summons to attend the House of Lords. As to peers sitting in the House of Commons see PARA 826.

3 As to the Committee for Privileges see PARA 853.

Halsbury's Laws of England/PEERAGES AND DIGNITIES (VOLUME 79 (2008) 5TH EDITION)/2. THE PEERAGE/(5) CLAIMS TO HEREDITARY PEERAGES/(ii) Jurisdiction/843. Jurisdiction of the House of Lords.

843. Jurisdiction of the House of Lords.

Whilst a hereditary peerage no longer confers on the holder an automatic right to sit in the House of Lords, the House of Lords still has inherent jurisdiction over claims to the right to sit and vote in the House[1]. The House of Lords claims to have an inherent right to decide claims to Irish peerages[2].

1 See **COURTS** vol 10 (Reissue) PARA 357. As to the removal of the automatic right to sit in the House of Lords see PARA 825.

2 See the *Earl of Waterford's Case* (1832) 6 Cl & Fin 133, HL. In 1922, J W de la Poer petitioned the Crown claiming to be Baron of le Power and Coroghmore in the Peerage of Ireland, and asking that the outlawry of a predecessor in title might be removed. On reference by the Crown, the House resolved that the barony was created by letters patent of Henry VIII in 1535, and, but for the outlawry of a predecessor in title, that the barony would now be vested in the petitioner: *Le Power and Coroghmore Barony Case* (1921). Claims to Irish peerages are now made by petition to the House of Lords: see PARA 847.

Halsbury's Laws of England/PEERAGES AND DIGNITIES (VOLUME 79 (2008) 5TH EDITION)/2. THE PEERAGE/(5) CLAIMS TO HEREDITARY PEERAGES/(iii) Procedure/844. Methods of claiming a peerage.

(iii) Procedure

844. Methods of claiming a peerage.

Claims to peerages arise either by immediate succession or to terminate an abeyance[1]. Peerage claims by immediate succession may be to determine: (1) whether a peer is eligible to stand in a by-election to the House of Lords[2]; or (2) a claim to an Irish peerage[3].

1 See PARA 848. As to abeyance see PARA 832; and as to termination of abeyance see PARA 833.

2 See PARA 845.

3 See PARA 847.

Halsbury's Laws of England/PEERAGES AND DIGNITIES (VOLUME 79 (2008) 5TH EDITION)/2. THE PEERAGE/(5) CLAIMS TO HEREDITARY PEERAGES/(iii) Procedure/845. Petition to determine whether a peer is eligible to stand in a by-election to the House of Lords.

845. Petition to determine whether a peer is eligible to stand in a by-election to the House of Lords.

If a person who succeeds to an eligible peerage[1] wishes to stand in a by-election for membership of the House of Lords as an elected hereditary peer[2] he must petition the House of Lords to prove his succession and right to be included in the Clerk of the Parliaments' register of hereditary peers. Such petitions are referred to the Lord Chancellor to consider and report whether the petitioner has established his right to be included in the register[3]. The Crown Office examines the claim on behalf of the Lord Chancellor[4]. If the Lord Chancellor is satisfied that the claim has been made out he reports this to the House of Lords, the succession is recorded in the minutes of proceedings of the House and the peer is entered on the Clerk of the Parliaments' register of candidates for by-elections and on the Roll of the Peerage[5]. If the Lord Chancellor is not satisfied that the petitioner has established his right to be included in the register, he reports that the claim is proper to be considered by the Committee for Privileges[6].

The House of Lords then refers the petition to the Committee which examines the claim as if it were a reference by the Crown[7].

1 Ie a peerage in the peerage of England, Scotland, Great Britain or the United Kingdom: see PARA 805.

2 See PARA 825.

3 HL Standing Orders (2007) (Public Business) no 11.

4 Ie at the Crown Office, House of Lords, London.

5 As to the Roll of the Peerage see PARA 841.

6 As to the Committee for Privileges see PARA 853.

7 See PARA 850.

Halsbury's Laws of England/PEERAGES AND DIGNITIES (VOLUME 79 (2008) 5TH EDITION)/2. THE PEERAGE/(5) CLAIMS TO HEREDITARY PEERAGES/(iii) Procedure/846. Application to be entered on the Roll of the Peerage.

846. Application to be entered on the Roll of the Peerage.

Where membership of the House of Lords is not at issue (that is, where the claimant has no interest in standing for election to the House of Lords under the by-election procedure[1]), the procedure on a claim by right to a peerage of England, Scotland, Great Britain or the United Kingdom[2] is begun by application to the Secretary of State for entry on the Roll of the Peerage[3]. The application is made in a similar manner to those applications made before the passing of the House of Lords Act 1999 when applying for a writ of summons to Parliament. The Crown Office administers the procedure[4]. A claim is made initially by letter with proof[5], but no petition is required[6]. If the claim is straightforward, the Secretary of State admits it and enters the claimant on the Roll. If the claim is complex or is opposed, the Secretary of State refuses to enter the claimant on the Roll. It is only when the Secretary of State refuses the application for entry on the Roll of the Peerage that a petition to the Crown becomes necessary[7].

1 See PARA 825.

2 See PARA 805.

3 As to the Roll of the Peerage see PARA 841.

4 Ie the Crown Office, House of Lords, London.

5 As to evidence see PARA 855 et seq.

6 See the text and note 7.

7 See PARA 850.

Halsbury's Laws of England/PEERAGES AND DIGNITIES (VOLUME 79 (2008) 5TH EDITION)/2. THE PEERAGE/(5) CLAIMS TO HEREDITARY PEERAGES/(iii) Procedure/847. Claim to a peerage in the peerage of Ireland.

847. Claim to a peerage in the peerage of Ireland.

The procedure on a claim to an Irish peerage[1] is by petition direct to the House of Lords[2]. The petition is referred by the House to the Lord Chancellor for his report, and if he is satisfied that the claim has been made out, he reports this to the House. The succession is recorded in the minutes of proceedings of the House and the peer is entered on the Roll of the Peerage[3]. If the Lord Chancellor is not satisfied that the claim to the peerage has been established, he reports that the claim is proper to be considered by the Committee for Privileges[4]. The House of Lords refers the petition to the Committee which examines the claim as if it were a reference by the Crown[5].

1 See PARAS 805, 813.

2 HL Standing Orders (2007) (Public Business) no 80.

3 As to the Roll of the Peerage see PARA 841.

4 As to the Committee for Privileges see PARA 853.

5 See PARA 850. At the date at which this volume states the law, no such petition has yet been considered by the Committee for Privileges. The petition of Viscount Mountgarret claiming the Earldoms of Ormond and Ossory in the Peerage of Ireland was referred to the Committee on 30 November 2000, the Lord Chancellor having reported that 'the petition was proper to be considered by the Committee for Privileges'. The petition was withdrawn on 24 January 2001.

Halsbury's Laws of England/PEERAGES AND DIGNITIES (VOLUME 79 (2008) 5TH EDITION)/2. THE PEERAGE/(5) CLAIMS TO HEREDITARY PEERAGES/(iii) Procedure/848. Petition to claim peerage in abeyance.

848. Petition to claim peerage in abeyance.

A claim to a peerage in abeyance[1] is made by petitioning the Crown through the Lord Chancellor that the petitioner may be declared a co-heir and that the abeyance may be terminated in his favour[2]. Since 1927 the Crown has indicated that no claim for a peerage in abeyance will be received in cases where the abeyance lasted for more than one hundred years. This decision followed a recommendation of the Select Committee on Peerages in Abeyance 1927[3]. Claims to Irish peerages in abeyance must be notified to the Crown; then the claimant must petition the House of Lords. The claim may be referred to the Committee for Privileges[4].

1 As to abeyance see PARA 832.

2 As to termination of abeyance see PARA 833.

3 The Select Committee on Peerages in Abeyance 1927 (referred to as the Sumner Committee, after the name of the Chairman, Lord Sumner) also recommended that an exception should be made in favour of petitions which had already been presented at the time when the Committee was appointed. The case of the Barony of Grey of Codnor was held to benefit from this exception, and the claim was successful: see the Report of the Committee of Privileges on the Barony of Grey of Codnor, June 1989 (HL Paper (1988-89) no 59-1).

4 HL Standing Orders (2007) (Public Business) no 81. As to the Committee for Privileges see PARA 853.

Halsbury's Laws of England/PEERAGES AND DIGNITIES (VOLUME 79 (2008) 5TH EDITION)/2. THE PEERAGE/(5) CLAIMS TO HEREDITARY PEERAGES/(iii) Procedure/849. Petition to remove attainder or other disqualification.

849. Petition to remove attainder or other disqualification.

Where a peerage is affected by attainder[1] or other disqualification, a petition to the Crown claiming the peerage, or praying for the termination of an abeyance[2] in the peerage, should refer to the disqualification and contain a prayer that, if it appears that such a disqualification exists, Her Majesty will be pleased to order that a Bill be introduced into Parliament for removal of the disqualification[3]. On the House resolving that but for the disqualification the petitioner would entitled to a peerage, or that but for the disqualification the peerage would be in abeyance and the petitioner would be a co-heir, a Bill may be introduced, signed by the Crown[4], for removing the disqualification. When this Bill has received royal assent, the claimant or co-heir may again petition the Crown, and the Crown refers the petition to the House of Lords. The same procedure is then followed as in an ordinary petition to terminate an abeyance[5].

Claims for restoration of peerage under the Titles Deprivation Act 1917[6] are made by petition to the Crown but are referred to a Committee of the Privy Council and not to the House of Lords[7].

1 As to attainder see PARA 838 note 1.

2 As to abeyance see PARAS 832-833, 848.

3 See **PARLIAMENT** vol 34 (Reissue) PARA 728 et seq.

4 See Erskine May's Parliamentary Practice (23rd Edn, 2004) p 1066.

5 See PARA 848.

6 See PARA 840.

7 See the Titles Deprivation Act 1917 s 2.

Halsbury's Laws of England/PEERAGES AND DIGNITIES (VOLUME 79 (2008) 5TH EDITION)/2. THE PEERAGE/(5) CLAIMS TO HEREDITARY PEERAGES/(iii) Procedure/850. Claims in cases of dispute or doubt: petition to the Crown.

850. Claims in cases of dispute or doubt: petition to the Crown.

Any person pursuing a claim to a peerage after the Secretary of State has refused entry on the Roll of the Peerage[1] or praying for the termination of an abeyance[2] must proceed by petition to the Crown. The petition is presented through the Crown Office in the Ministry of Justice[3], which refers it to the Attorney General to report on the claim[4]. In pre-Union Scottish peerages the petition is presented through the Scotland Office and referred to the Lord Advocate[5]. In post-Union peerages with a strong Scottish connection the petition is presented through the Crown Office in the Ministry of Justice, but assigned to the Scotland Office for the Lord Advocate's report[6].

In a claim by right the law officer usually advises the Crown to refer the claim to the House of Lords.

In the case of petitions to terminate an abeyance[7] it may be said generally that if:

13 (1) the Attorney General is satisfied that no improper arrangement has been entered into between the petitioner and co-heirs, or any of them;
14 (2) the petitioner does not come within the exceptions laid down by the House of Lords; and
15 (3) on the hearing before the Attorney General no question of law or pedigree is at issue,

the Attorney General recommends the exercise of royal discretion to grant or refuse the petition without reference to the House of Lords.

However, if the Attorney General is of the opinion that there may be grounds for doubting the propriety of any arrangement between co-heirs, he must recommend a reference to the House of Lords, since it is for the House, and not the Attorney General, to decide whether any impropriety exists in the agreement[8].

When a petition is referred to the Attorney General he requires the petitioner to attend before him with written and oral evidence in order to establish a prima facie case[9].

Persons wishing to make a claim to a peerage in respect of which a petition by another claimant is already before the House of Lords must proceed by petition to the Crown presented through the Crown Office in the Ministry of Justice, even when such persons have obtained the permission of the House to be heard in opposition to the other petition[10].

Where a petitioner desires only to obtain permission to be heard in opposition to a claim of peerage, or to claim a peerage of Ireland[11], or where his claim relates to precedence, place in the House or some similar question, the petition should be addressed and presented to the House of Lords. Although there is no standing order which lays down the time limits within which such incidental petitions should be lodged, the Judicial Office of the House of Lords recommends that a petition should be presented at least two weeks before the date on which the Committee for Privileges[12] is expected to sit.

Any petition in pursuance of a claim for a peerage must set out in detail the facts which prove that the peerage has descended to the claimant or the facts which prove that the peerage is in abeyance and that the claimant is one of the co-heirs, stating also who are the other co-heirs[13].

1 See PARA 846. As to the Roll of the Peerage see PARA 841.

2 See PARA 848. As to abeyance see PARAS 832-833.

3 See the Secretary of State for Justice Order 2007, SI 2007/2128.

4 Upon the reference being made, the claimant's agent must attend at the Judicial Office of the House of Lords to inquire as to the presentation of the petition, because the time limit for lodging the case runs from the date of presentation of the petition.

5 See PARA 805.

6 See the Minutes of Evidence of the Committee for Privileges in the Viscountcy of Oxfuird Peerage Claim, 1977. The procedure was first followed in the Earldom of Annandale and Hartfell Peerage Claim, 1985: see the Report from the Committee for Privileges, together with the proceedings of the Committee and speeches of counsel (HL Paper (1984-85) no 228-1).

7 See note 2.

8 As to how arrangements between co-heirs are to be dealt with see the Special Report of the Committee for Privileges on Peerages in Abeyance (the 'Strange case') (HL Paper (1985-86) no 176) and the Lords Journals 16 and 18 December 1986. For an earlier case see the Minutes of Evidence taken before the Committee for Privileges in the Barony of Vaux Peerage Claim, 1938.

9 See eg the Report of the House of Lords Select Committee on Peerages in Abeyance (1927) pp 37-40 (where the nature of this investigation is clearly examined). See also the Lords Journals 31 May, 6, 7, and 11

July 1927 (which record the checks placed on the termination in abeyance). As to evidence see further PARA 855 et seq.

10 In the case of the Barony of Moynihan a petition opposing the claim was presented by Daniel Moynihan. The petition was deposited the day before the Committee was to meet; the Committee made it clear that they only exceptionally agreed to consider the petition: see Proceedings for the Committee for Privileges on the Barony of Moynihan (HL Paper (1996-97) no 53-1, pp 5, 6).

11 See PARA 847.

12 As to the Committee for Privileges see PARA 853.

13 See PARA 855 et seq.

Halsbury's Laws of England/PEERAGES AND DIGNITIES (VOLUME 79 (2008) 5TH EDITION)/2. THE PEERAGE/(5) CLAIMS TO HEREDITARY PEERAGES/(iii) Procedure/851. Lapse of time.

851. Lapse of time.

Lapse of time, if satisfactorily explained, is no bar to a claim to a peerage[1], but, if unexplained, may give rise to a presumption against the right of the claimant[2].

1 Com Dig, Dignity (E); *Hastings Peerage Case* (1841) 8 Cl & Fin 144 at 163-165, HL; *Fitzwalter Peerage Case* (1844) 10 Cl & Fin 946 at 957, HL.

2 *De Wahull Peerage Case* (1892) Minutes of Evidence 88.

Halsbury's Laws of England/PEERAGES AND DIGNITIES (VOLUME 79 (2008) 5TH EDITION)/2. THE PEERAGE/(5) CLAIMS TO HEREDITARY PEERAGES/(iii) Procedure/852. Preliminary examination.

852. Preliminary examination.

The petition[1] for a claim to a peerage is in the first instance lodged with the Crown Office. If the petition is found to be genuine, the Lord Chancellor takes the pleasure of the Crown upon it. The Crown usually orders the petition to be referred to the Attorney General for examination and report. The Attorney General then requires the petitioner to make out a prima facie case by the lodgment of a pedigree and proofs properly prepared, and, if dissatisfied with the measure of proof, requires further evidence. The petitioner is then instructed to appear before the Attorney General on a date fixed. He may appear in person or by agent or counsel. The Attorney General puts such questions as he deems fit in relation to the pedigree and the evidence produced. Subsequently his report to the Crown is prepared. The Attorney General may report:

16 (1) that the petition and evidence is not such as to justify any step being taken; or

17 (2) that the petition should be referred to the House of Lords; or

18 (3) exceptionally, that the evidence is such as to justify an immediate exercise of the royal favour to grant the prayer of the petitioner if the Crown be so pleased.

The report is sent to the Lord Chancellor, who takes the Crown's pleasure upon it. This is expressed either by no action being taken or by adopting the recommendation of the Attorney General[2].

Petitions in respect of pre-Union and post-Union Scottish peerages are lodged with the Lord Chancellor and reported on by the Lord Advocate. Where there is a sufficient Scottish connection, the Crown's interest will be assigned to the charge of the Secretary of State for Scotland and the Lord Advocate[3].

1 As to claims by petition see PARA 850.

2 In the preliminary proceedings the Attorney General is solely the servant of the Crown and owes no duty to the House of Lords: see the Report on Peerages in Abeyance (1927) Minutes of Evidence 38.

3 *Viscountcy of Oxfuird Case* (1977) 1986 SLT (Lyon Ct) 8, HL.

Halsbury's Laws of England/PEERAGES AND DIGNITIES (VOLUME 79 (2008) 5TH EDITION)/2. THE PEERAGE/(5) CLAIMS TO HEREDITARY PEERAGES/(iii) Procedure/853. Reference of claim to the Committee for Privileges.

853. Reference of claim to the Committee for Privileges.

If a petition on a peerage claim is referred to the House of Lords, the House refers it to the Committee for Privileges[1] which hears the claim in accordance with the Standing Orders of the House[2]. The Committee may examine witnesses on oath, order the production of documents and hear counsel[3]. When the claim comes before the Committee for Privileges, the Attorney General represents the Crown's interest and takes up a position of nominal opposition, but is present more especially to advise the Committee when requested to do so[4]. If the petition is in respect of a pre-Union Scottish peerage, or a post-Union Scottish peerage deemed to have a sufficient Scottish connection, the Lord Advocate has charge of the Crown's interest. In a proper case the Committee may assign counsel to take up a case where the claimant is prevented by lack of means[5]. The Committee may in proper cases hear persons who are not claimants, but appear to be concerned. An objector may himself claim the peerage, or he may object on other grounds[6].

It is the duty of the Committee to consider the effect of any clause in a patent in the case referred to it[7].

1 A Committee for Privileges is appointed at the beginning of every session. Sixteen Lords are named of the Committee, together with any four Lords of Appeal. In any claim of Peerage, the Committee must not sit unless three Lords of Appeal are present: HL Standing Orders (2007) (Public Business) no 78. As to the Committee for Privileges see **PARLIAMENT** vol 78 (2010) PARA 886. See also **COURTS** vol 10 (Reissue) PARA 358.

2 See HL Standing Orders (2007) (Public Business). The claimant is required to hand in a printed case, stating precisely the creation and limitation of the dignity and the steps by which the right has descended, and this in the form of separate paragraphs, the relative documents being related to each paragraph, and usually printed in full in an appendix to the case. These requirements vary from time to time and must be ascertained. In the event of opposition, or seeking a locus on any ground, the person considering himself to be interested also proceeds by way of petition to the House. Cf **PARLIAMENT** vol 78 (2010) PARAS 838, 840.

3 Every person who claims a title of honour must, within six weeks after his petition has been presented to the House, lodge his printed case, pedigree and proofs with the Clerk of the Parliaments: HL Standing Orders (2007) (Public Business) no 79(1).

The House has laid down directions with regard to documents delivered in at the Bar in evidence in peerage claims, and the examination of those documents when printed by order of the House. Records and documents in public custody may be proved before the Committee by copies officially certified as in ordinary legal

proceedings. The production of originals of such documents is not required except on an order of the Lord Speaker or Chairman of Committees. Originals of records and documents in private custody, together with copies of them, must be produced and proved before the Committee: HL Standing Orders (2007) (Public Business) no 79(2).

In unopposed claims the record of the documentary evidence given before the Committee is examined by an examiner appointed by the Crown Agent. The Crown Agent may, if he think fit, similarly appoint an examiner in opposed claims. The cost of the examination is borne by the claimant: HL Standing Orders (2007) (Public Business) no 79(3).

The fees to be charged are such as are authorised from time to time by the House of Lords: HL Standing Orders (2007) (Public Business) no 79(4).

4 If the Attorney General is unable to be present at the hearing of the claim, the Solicitor General takes his place. In cases of great importance both law officers appear. A difficulty arises when counsel for the claimant becomes a law officer of the Crown during the hearing of the claim. In the *Tracy Peerage Case* (1843) 10 Cl & Fin 154 at 160n, HL, counsel for the claimant became Attorney General and subsequently appeared for the Crown, the Solicitor General appearing for the claimant. In the *Wharton Peerage Case* (1845) 12 Cl & Fin 295 at 299, HL, the Solicitor General had appeared for the claimant. On his appointment to be Attorney General, he did not appear and the new Solicitor General appeared for the Crown: *Wharton Peerage Case* at 301n, 302n. In the *Shrewsbury Peerage Case* (1858) 7 HL Cas 1, counsel for the claimant appeared for the claimant after becoming Attorney General; the Solicitor General appeared for the Crown. In the *Somerset Dukedom Case* (1926) the Attorney General had previously appeared for one of the parties before succeeding to office and the Solicitor General appeared for the Crown.

5 *Earl Roscommon's Case* (1828) 6 Cl & Fin 97, HL. This has not been done for more than a century. If the case is genuine and well founded, the petitioner finds few practical difficulties before the Committee for Privileges.

6 *Slane Peerage Case* (1835) 5 Cl & Fin 23, HL; *Braye Peerage Case* (1839) 6 Cl & Fin 757, HL; *Shrewsbury Peerage Case* (1858) 7 HL Cas 1. Cf *Berkeley Peerage Case* (1861) 8 HL Cas 21; *Norfolk Earldom Case* [1907] AC 10, HL (where the holder of an earldom of Norfolk other than that in question was allowed to oppose; and the preliminary proceedings in the claims to the earldoms of Warwick and Salisbury which were alleged to be in fee, where the Earls of Warwick and of Salisbury, holding earldoms of later creation, were allowed to appear in opposition).

7 *Buckhurst Peerage Case* (1876) 2 App Cas 1, HL.

Halsbury's Laws of England/PEERAGES AND DIGNITIES (VOLUME 79 (2008) 5TH EDITION)/2. THE PEERAGE/(5) CLAIMS TO HEREDITARY PEERAGES/(iii) Procedure/854. Report of the Committee for Privileges.

854. Report of the Committee for Privileges.

The Committee for Privileges[1] resolves on the claim and reports to the House. If the Committee is satisfied on a claim for the determination of an abeyance that any arrangement entered into between the petitioner and any co-heir is tainted with any impropriety, the Committee must make no report to the House except that such arrangement is not shown to have been a proper one[2]. The House usually resolves in the terms of the Committee's decision and the resolutions are reported to the Crown[3]. Exceptionally, the House refers back the report to the Committee for Privileges for reconsideration[4].

1 See PARA 853.

2 HL Standing Orders (2007) (Public Business) no 82.

3 See the Report on Peerages in Abeyance (1927) Minutes of Evidence 41, 47.

4 Such a reference back was made in 1922 in *Viscountess Rhondda's Case* [1922] 2 AC 339, HL, and as a result the Committee resolved in a sense contrary to the original report.

Halsbury's Laws of England/PEERAGES AND DIGNITIES (VOLUME 79 (2008) 5TH EDITION)/2. THE PEERAGE/(5) CLAIMS TO HEREDITARY PEERAGES/(iv) Evidence/855. Admissibility of evidence.

(iv) Evidence

855. Admissibility of evidence.

The admissibility of evidence in a peerage claim is entirely within the jurisdiction of the committee hearing the claim[1], but ordinarily the rules of evidence prevailing in the civil courts are followed[2]. The committee will usually accept evidence admitted and recorded in previous claims, especially in relation to pedigrees, with all just exceptions, to the date of admission, but application for permission to use the evidence must be obtained before it will be admitted[3].

1 The following have been tendered in evidence in various cases, and have been received or rejected according to the circumstances: private Acts of Parliament (*Wharton Peerage Case* (1845) 12 Cl & Fin 295, HL; *Shrewsbury Peerage Case* (1858) 7 HL Cas 1); copies of inscriptions no longer legible (*Shrewsbury Peerage Case*); inscriptions on tombs in churches (*Shrewsbury Peerage Case*); statements in wills as to pedigree (*Shrewsbury Peerage Case*); incomplete documents and records (*Slane Peerage Case* (1835) 5 Cl & Fin 23, HL; *Crawford and Lindsay Peerages Case* (1848) 2 HL Cas 534; *Shrewsbury Peerage Case* above; cf the *Vaux Peerage Case* (1837) 5 Cl & Fin 526, HL); coat of arms in St George's Chapel, Windsor (*Shrewsbury Peerage Case* above; *Berkeley Peerage Case* (1861) 8 HL Cas 21 at 37); records from the Heralds' College (*Vaux Peerage Case* above at 541, 544; *Tracy Peerage Case* (1843) 10 Cl & Fin 154 at 157, HL; *Shrewsbury Peerage Case* above at 24, 31, 33). As to proof of handwriting see the *Fitzwalter Peerage Case* (1844) 10 Cl & Fin 193, 946, HL; *Shrewsbury Peerage Case* above. Blood test evidence to determine paternity is admissible in peerage claims: *Re Moynihan* [2000] 1 FLR 113, HL. See further **CIVIL PROCEDURE** vol 11 (2009) PARAS 832-834. As to the measure of value for pedigree purposes to be attached to funeral certificates and visitations from the College of Arms see the *Strange of Knokin and Stanley Baronies Case* (1920) Minutes of Evidence xvi, xxii-xxxvi. In the *Fairfax Peerage Case* [1908] WN 226, HL, a predecessor of the claimant having made out his claim in 1800, the claimant produced in evidence the testimony of relatives, an old family Bible, and monumental inscriptions (there being no early record of births, deaths and marriages in Virginia, USA, where the family had settled since 1750, and most of the records having been destroyed by the Northern Army during the American Civil War), and the committee accepted secondary evidence in support of the claim to the barony.

2 For a summary of the evidence admissible in a peerage claim see Palmer's Peerage Law in England 235-240.

3 Eg in the *Latymer Peerage Case* (1912) the evidence of pedigree in the de Scales claim of 1856 was admitted so far as collaterals were concerned, but counsel said he considered that the direct line should be proved strictly. In the *Oxford Earldom Case* (1912) the pedigree material used in the Latymer claim was freely admitted. Both petitioners were co-heirs to the barony as well as to the earldom. The present practice is for a petitioner to lodge an incidental petition asking for permission to use pedigree or other evidence admitted in previous claims. See also the *Strange of Knokin and Stanley Baronies Case* (1920) Documents accompanying the Joint Case 9. If satisfied that there is no question at issue, the officers of the House then arrange for formal permission from the House. The record reads that the petition has been read and ordered as prayed subject to all just exceptions, with a liberty to all concerned to take objections hereafter. This practice is intended to save time, trouble and expense in the presentation of evidence already on record and to which no person interested objects. See the records in the *St John Peerage Case* [1915] AC 282, HL, and the *Fitzwalter Peerage Case* (1925) 157 Lords Journals 8. Copies of charters illustrating the descents in offices of honour produced in the *Lord Great Chamberlain's Case* (1902) were allowed to be reprinted and used without further proof in the *Lucas Peerage Case* (1907): see speeches of counsel. See also the *Beauchamp and Mordaunt Baronies Case* (1928) Proceedings and Evidence lxiii.

Halsbury's Laws of England/PEERAGES AND DIGNITIES (VOLUME 79 (2008) 5TH EDITION)/2. THE PEERAGE/(5) CLAIMS TO HEREDITARY PEERAGES/(iv) Evidence/856. Evidence of creation.

856. Evidence of creation.

In all peerage claims evidence of creation, descent and extinction of nearer heirs[1] must be proved. In addition, in a claim to be declared co-heir to a barony in abeyance[2], the persons who are the other co-heirs must, so far as it is known, be stated, and their pedigree proved[3], and it must be proved that they have all been served with notice of the claim[4]. It is necessary to ascertain, so far as is possible, the fractional part ascribed to each co-heir in the co-heirship[5].

To prove the creation of the dignity the claimant must produce the instrument of creation or, if it cannot be found, the enrolment[6], or give such evidence as the House of Lords requires[7].

In the case of baronies by writ[8], the claimant must produce from the Close Rolls[9] the record of the writ of summons and proof of sitting from the Journals of the House of Lords[10]. In cases before the dates of existing Journals[11], he must prove by record that the ancestor took part in some proceeding which necessitated his presence as a peer[12]. This is sufficiently proved by evidence that a particular peer was appointed to do some act, hear some appeal or be a member of some commission[13].

1 Proof of extinction is always difficult. It is not so strictly required for co-heirships in abeyance claims as for definite claims to a peerage as of right. Generally, a skilled searcher of records should be employed and searches made in the period in question for certificates of birth, marriage and death, wills, legal proceedings, monumental inscriptions, public notices etc. The searcher is required to give oral evidence of the nature of searches made and to produce the results. For this kind of material see *Le Power and Coroghmore Barony Case* (1921) Minutes of Evidence xxviii-xxxi. On negative results see the *Beauchamp and Mordaunt Baronies Case* (1928) Proceedings and Evidence xvii-xx.

2 As to abeyance see PARAS 832-833, 848.

3 *Braye Peerage Case* (1839) 6 Cl & Fin 757 at 766. Strict proof of the pedigree of co-heirs is not insisted on where conclusive proof is impossible: see the *Braye Peerage Case*; and *Fitzwalter Peerage Case* (1844) 10 Cl & Fin 946, HL.

4 *Vaux Peerage Case* (1837) 5 Cl & Fin 526, HL; *Braye Peerage Case* (1839) 6 Cl & Fin 757 at 789. Notice by post has been held insufficient: *Camoys Peerage Case* (1839) 6 Cl & Fin 789 at 794, HL. See also the *Latymer Peerage Case* (1912) Minutes of Evidence 3, 4.

5 See the Report on Peerages in Abeyance (1927) 6. This requirement means a more exact searching for co-heirs and therefore reasonable searches must be prosecuted: Report on Peerages in Abeyance (1927) 7, 11. The thoroughness of search required may be gathered from the *Strange of Knokin and Stanley Baronies Case* (1920) Minutes of Evidence xlv et seq.

6 *Tracy Peerage Case* (1843) 10 Cl & Fin 154 at 156, 157, HL; and see PARA 814.

7 The instrument of creation of ancient dignities is usually lost, but some act may be on record which implies creation: see the *Crawford and Lindsay Peerages Case* (1848) 2 HL Cas 534, where the proof accepted in the claim to the earldom of Crawford was an entry in the Lord Treasurer's accounts of the expense of creating that dignity and two royal dukedoms in Parliament. Creation of the barony by letters patent was proved by producing from State Papers, Ireland, Henry VIII vol II No 68, a bill indented that the Master of the Rolls in Ireland had received from Cromwell, Secretary of State, two creations (one for Sir Richard Power) as Barons of Parliament in Ireland, together with a copy of a letter from the Lord Chancellor to Cromwell from the British Museum Cotton MSS asking Cromwell to have these two patents which 'I have made' dealt with: see the *Le Power and Coroghmore Barony Case* (1921) Minutes of Evidence, App I. As to proof by circumstantial evidence see also the *Mar Peerage Case* (1875) 1 App Cas 1, HL. Statements by chroniclers and contemporary historians are not admissible as evidence of creation: *Vaux Peerage Case* (1837) 5 Cl & Fin 526, HL. In all such cases the existence of the dignity is abundantly proved by records, and it is merely its origin which is required to be established. Cf also the *Perth Earldom Case* (1848) 2 HL Cas 865. In the absence of the original letters patent the committee may accept an examined copy coming from proper custody: *Earl of Lanesborough's Case* (1848) 1 HL Cas 510n; *Saye and Sele Barony Case* (1848) 1 HL Cas 507; cf the *Huntly Peerage Case* (1838) 5 Cl & Fin 349, HL. The limitations of the peerage may be proved from the Journals of the House of Lords: *Saye and Sele Barony Case* above; *Lord Dufferin and Claneboye's Case* (1837) 4 Cl & Fin 568, HL. See also the *Dudhope Peerage Case* (1952) Proceedings and Judgment 127 (where the destination of the peerage was proved by the index to the Great Seal Register of Scotland, the relevant leaves of the Register being missing, and a certified extract from the Privy Council minutes); and the *Dundee Earldom Case* (1953) Proceedings and Judgment 46 (where the passing of the patent was proved by an entry in the records of the Scottish Parliament and the terms of the limitation by copies in the British Museum and the Advocates' Library of Signatures ordaining a patent to

be made under the Great Seal of Scotland). As to the presumption where no evidence of the limitations is to be found see PARA 815.

8 As to barony by writ see PARA 822.

9 Palgrave's Parliamentary Writs is a useful guide. If the close roll is lost, the writ may be presumed from an otherwise unexplained sitting: *Hastings Peerage Case* (1841) 8 Cl & Fin 144, HL.

10 As to the Journals as evidence see **PARLIAMENT** vol 78 (2010) PARA 868.

11 The published Journals of the House of Lords date from 1510: see the *Vaux Peerage Case* (1837) 5 Cl & Fin 526, HL.

12 What constitutes a proceeding in Parliament may be a matter of argument: see the *Hastings Peerage Case* (1841) 8 Cl & Fin 144 at 150, 151, 160-162, HL; Cruise on Dignities (2nd Edn) c 5 s 71. In the *Cromwell Peerage Case* (1920) proof of evidence of sitting was given that the ancestor acted as a witness in Parliament of two patents for the settlement of the Crown (Document No 7), and was appointed as a trier of petitions (Document No 10). See also the *Strange of Knokin and Stanley Baronies Case* (1920) (Documents Nos 32, 41, 42, 49, 50). See also generally the *Strabolgi Peerage Case* (1914) Minutes of Evidence, and Lord Atkinson's speech in the *Beauchamp Barony Case* [1925] AC 153, HL. The name of a man summoned may appear as a witness to a charter mentioned in the Rolls of Parliament, but it is also necessary to show that the charter was actually made in Parliament: *Montacute and Monthermer Peerages Case* (1928) Proceedings and Evidence xxv. A writ of summons to an individual, and a Parliament Roll which records that the individual attended, and had been made an earl by investiture in Parliament, is sufficient evidence that he was present in Parliament as a baron before his investiture as an earl (Minutes of Evidence xxxiii), but a Parliament Roll which records the appointment of several persons to act as an Embassy to France is not evidence that one of them, who also received a summons to that Parliament, received an appointment which could have been made only in his capacity as a peer (Minutes of Evidence xxvi-xxxiii).

13 *Botetourt Peerage Case* (1764) Palmer's Peerage Law in England 46 (where the roll of 50 Edw III, showing John, Lord Botetourt, to have been a mainpernor of Parliament, was allowed as proof of sitting); *Cromwell Peerage Case* (1920) Document No 2. The mainperning must, however, have taken place in full Parliament and not have been completed elsewhere; otherwise it is insufficient to prove physical presence: see the *Montacute and Monthermer Peerages Case* (1928) Proceedings and Evidence xx, xxv and App 4 p 2. In the *Mowbray and Segrave Peerage Case* (1877) Minutes of Evidence, a statement or recital in letters patent describing the patentee as Baron Mowbray was admitted to prove termination of an abeyance.

857. Evidence of descent.

The claimant must prove descent from the original grantee within the original limitation[1], except in proving a claim to a barony which, having been revived after being previously in abeyance, is again in abeyance, where it is sufficient to prove descent from the holder in whose favour it was last revived[2].

If the peerage, validly created, has ceased to exist or its extinction in law can be argued, the Committee for Privileges may hear the argument and decide the question whether there is a dignity capable of being claimed before allowing any evidence of pedigree to be adduced[3].

1 *Grey de Ruthyn Case* (1640) Collins's Baronies by Writ (1734 Edn) 256, HL.

2 *Fitzwalter Peerage Case* (1844) 10 Cl & Fin 946, HL. The complete descent should, however, be set out in the petition and leave obtained to refer to the evidence given in the proceedings on the previous abeyance. As to such leave see PARA 855 note 3. As to abeyance see PARAS 832-833, 848.

3 This may happen in cases of attainder: see the *Southesk Earldom Case* (1848) 2 HL Cas 908. As to attainder see PARA 838 note 1. The power was also exercised in the *Duke of Montrose's Case* (1853) 1 Macq 57, 401, Lord Lindsay's Report 3, HL. The procedure of allowing a claimant to prove his right subject to attainder or other obstacle has, however, been more often adopted. See also the *Le Power and Coroghmore Barony Case*

(1921) Minutes of Evidence, in which the point of validity of letters patent of creation was first settled before proceeding to pedigree evidence.

Halsbury's Laws of England/PEERAGES AND DIGNITIES (VOLUME 79 (2008) 5TH EDITION)/2. THE PEERAGE/(5) CLAIMS TO HEREDITARY PEERAGES/(iv) Evidence/858. Declarations as to pedigree.

858. Declarations as to pedigree.

Declarations by living persons[1] as to pedigree are admissible in peerage claims, whatever the weight attached to them may be. When made by near relations, they are always admitted[2]. Any declaration made after litigation is contemplated may, however, be rejected[3].

A peer may give evidence and subsequently participate in the judgment in the same case[4].

Formerly, resort might be had to an action to perpetuate testimony, but this procedure has fallen into disuse[5].

1 As to declarations by deceased persons see **CIVIL PROCEDURE** vol 11 (2009) PARA 830. A written declaration by a deceased person is not always admissible: *Berkeley Peerage Case* (1811) 4 Camp 401, HL; cf the *Shrewsbury Peerage Case* (1858) 7 HL Cas 1. Probably the Volumes of Sheets of Peers Pedigrees, signed and certified on their honour and handed in during the period 1767-1802 by virtue of a standing order of the House, remitted to the Committee for Privileges for examination and filed by the officers of the House, are admissible to prove the items of pedigree. There are four such volumes in the library of the House, which undoubtedly are records of the House in the custody of its officers. The pedigrees are records to the date of the peer's introduction and are valuable as a record of his family for several generations before his birth, and for the then condition of his descendants and some collaterals. A similar order was passed by the House of Peers (Ireland) and substituted until the extinction of that House by the Union with Ireland Act 1800. A pedigree duly recorded under the order was accepted as evidence in the *Westmeath Earldom Case* (1871). As to the value generally to be attached to signed pedigrees not in official custody, and as to the weight certification by the College of Arms may have, see the *Montacute and Monthermer Peerages Case* (1928) Proceedings and Evidence xlix-li.

2 As to statements by remote relations see the *Lindsay Peerage Case* (1877) Minutes of Evidence.

3 See **CIVIL PROCEDURE** vol 11 (2009) PARA 830. In the *Annandale Peerage Case* (1878) Minutes of Evidence, a printed case was admitted to prove that a pedigree alleged to come from the charter chest was in reality prepared after litigation had been contemplated: see the *Berkeley Peerage Case* (1811) 4 Camp 401, HL; *Slane Peerage Case* (1835) 5 Cl & Fin 23, HL.

4 *R v Five Popish Lords* (1685) 7 State Tr 1217, 1458, HL; *R v Earl of Macclesfield* (1725) 16 State Tr 767, HL.

5 Actions to perpetuate testimony were governed by RSC Ord 39 r 15, but there is no equivalent provision in the CPR: see **EQUITY** vol 16(2) (Reissue) PARA 474; **CIVIL PROCEDURE** vol 11 (2009) PARA 989 et seq. Such actions were not appropriate where the real question in dispute could be determined at once by other proceedings (eg proceedings to obtain a declaration of legitimacy): see *West v Lord Sackville* [1903] 2 Ch 378, CA.

Halsbury's Laws of England/PEERAGES AND DIGNITIES (VOLUME 79 (2008) 5TH EDITION)/2. THE PEERAGE/(5) CLAIMS TO HEREDITARY PEERAGES/(iv) Evidence/859. Documentary evidence.

859. Documentary evidence.

Where there are no letters patent creating a barony and no enrolment can be found, the creation of a peerage may be proved by proof of writ of summons and sitting in the House of Lords[1].

Documents in public custody may be proved by copies officially certified as in ordinary legal proceedings[2]; but documents in private custody must be proved by production of the original from proper custody[3].

1 *Hastings Peerage Case* (1841) 8 Cl & Fin 144 at 150, 151, HL. As to creation of barony by writ and proof of having sat in Parliament see PARA 822. As to the abolition of the automatic right of all hereditary peers to sit in the House of Lords see PARA 825.

2 HL Standing Orders (2007) (Public Business) no 79(2); 84 Lords Journals 96; and see PARA 853 note 3. As to the proof of wills prior to 1700 see the *Fitzwalter Peerage Case* (1844) 10 Cl & Fin 946 at 952, HL. See also the *Shrewsbury Peerage Case* (1858) 7 HL Cas 1. As to the French marriage registers see the *Perth Earldom Case* (1848) 2 HL Cas 865; and as to the general rules for proof of records see **CIVIL PROCEDURE** vol 11 (2009) PARAS 884-888.

3 HL Standing Orders (2007) (Public Business) no 79(2). Proper custody in the case of private documents is the charter chest of the family, or of the present possessor of estates acquired from an ancestor of the claimant: see the *Camoys Peerage Case* (1839) 6 Cl & Fin 789 at 801, HL. See also the *Chandos Peerage Case* (1802) Brydge's Report 1, HL; *Roos Peerage Case* (1804) Minutes of Evidence. An old attested copy of a deed coming from proper custody may be admissible: *Fitzwalter Peerage Case* (1844) 10 Cl & Fin 946 at 953, HL. An inscription on a portrait in proper custody has been received in evidence: *Camoys Peerage Case* above at 801, 802; and see **CIVIL PROCEDURE** vol 11 (2009) PARAS 871-873.

Halsbury's Laws of England/PEERAGES AND DIGNITIES (VOLUME 79 (2008) 5TH EDITION)/2. THE PEERAGE/(5) CLAIMS TO HEREDITARY PEERAGES/(iv) Evidence/860. Legitimacy.

860. Legitimacy.

Questions as to legitimacy frequently arise in connection with claims to peerages. The ordinary law as to legitimacy in relation to succession to land and the effect of domicile applies[1].

The status of a legitimate or lawful heir may be questioned in respect of an ancestor, but has usually arisen in respect of the claimant himself at the instance of a counterclaimant or the Crown[2]. In such cases the physical fact of impotency or of non-access[3] or of non-generating access, as the case may be, may always be lawfully proved by means of such legal evidence as is strictly admissible in every other case in which it is necessary that a physical fact be proved[4].

A declaration of legitimacy[5] binds the Crown and extends to peerage claims[6]. There are only two exceptions to the binding effect of such a declaration:

19 (1) it must not prejudice any person not cited or made a party, unless that person claims through a person cited or made a party; and

20 (2) it must not prejudice any person if obtained by fraud or collusion[7].

1 See **CHILDREN AND YOUNG PERSONS** vol 5(3) (2008 Reissue) PARA 94 et seq; **CONFLICT OF LAWS** vol 8(3) (Reissue) PARAS 35 et seq, 336 et seq. As to legitimation see PARA 809. The liability of a peer to attend in Parliament when his presence is required does not prevent him from acquiring a foreign domicile: *Hamilton v Dallas* (1875) 1 ChD 257.

2 *Banbury Peerage Case* (1811) 1 Sim & St 153, fully reported in Nicolas's Treatise on Adulterine Bastardy (1836 Edn) 182-187. For a case where a claimant brought a petition in the Probate Division of the High Court of Justice under the Legitimacy Declaration Act 1858 ss 4, 11 (repealed) see *Sackville-West v A-G* [1910] P 143. See also **EQUITY** vol 16(2) (Reissue) PARA 474. See also *Sussex Peerage Case* (1844) 11 Cl & Fin 85, HL, where the Duke of Sussex was married to Lady Augusta Murray validly by the law of Rome, although the parties were not domiciled in Rome, but the marriage was invalid under the Royal Marriages Act 1772 s 1: see **CROWN AND ROYAL FAMILY** vol 12(1) (Reissue) PARA 36.

3 *Saye and Sele Barony Case* (1848) 1 HL Cas 507.

4 *Banbury Peerage Case* (1811) 1 Sim & St 153, Minutes of Evidence 269. Impotency and impossibility of access were formerly the only allegations which could rebut the presumption that the mother's husband is the father. As to access see also the *Gardner Peerage Case* (1826) Le Marchant's Report, Petition, Case and Minutes of Evidence; *The Poulett Peerage* [1903] AC 395, HL. As to admissible evidence to prove non-access see the Matrimonial Causes Act 1973 s 48(1), abrogating the rule in *Russell v Russell* [1924] AC 687, HL, where the cases are reviewed. As to evidence of a wife as to her child's legitimacy see **MATRIMONIAL AND CIVIL PARTNERSHIP LAW** vol 72 (2009) PARA 355. As to a declaration by either spouse as to non-access before marriage see *The Poulett Peerage* at 398 per Lord Halsbury LC. See further the *Saye and Sele Barony Case* (1848) 1 HL Cas 507; *The Aylesford Peerage* (1885) 11 App Cas 1, HL. As to impotency and incapacity to consummate marriage see **MATRIMONIAL AND CIVIL PARTNERSHIP LAW** vol 72 (2009) PARA 336 et seq.

5 As to such declarations see the Family Law Act 1986 s 56; and **CHILDREN AND YOUNG PERSONS** vol 5(3) (2008 Reissue) PARA 122. On a petition for such a declaration the court has no power to declare that the petitioner is entitled to succeed to a peerage: see *Frederick v A-G* (1874) LR 3 P & D 196.

6 *Ampthill Peerage Case* [1977] AC 547, [1976] 2 All ER 411, HL (referring to the Legitimacy Declaration Act 1858 (repealed), which corresponded to the Matrimonial Causes Act 1973 s 45 (repealed)).

7 See the *Ampthill Peerage Case* [1977] AC 547, [1976] 2 All ER 411, HL.

3. OTHER DIGNITIES

(1) THE BARONETAGE

861. In general.

The hereditary dignity of baronet was first instituted by James I in 1611, to be granted to those persons who should contribute to the expenses of the Plantation of Ulster[1]. In 1625 it was decided to encourage the Plantation of Nova Scotia in the same manner. There are now five classes of baronets, namely:

(1) baronets of England, created between 1611 and 1707;
(2) baronets of Ireland, created between 1618 and 1801;
(3) baronets of Nova Scotia, created between 1625 and 1707;
(4) baronets of Great Britain, created between 1707 and 1801; and
(5) baronets of the United Kingdom, created since 1801.

A baronetcy is created by letters patent under the Great Seal[2], but the dignity is not one of the five degrees of peerage[3], nor is it part of the knighthood[4]. A baronetcy is an incorporeal hereditament, and, being limited to the heirs of the body, is descendible as an estate tail and not a fee simple conditional, although no place is named in its creation[5]. The oath of allegiance must be taken by all baronets on their creation[6].

1 See 1 Bl Com (14th Edn) 403. A baronetcy is not one of the five degrees of peerage (see PARA 804), nor is it part of the knighthood (see PARA 865 et seq). A baronetcy is an incorporeal hereditament, and, being limited to the heirs of the body, is within 13 Edw 1 (Statute of Westminster the Second) (1285) c 1 (De Donis Conditionalibus), and is descendible as an estate tail and not a fee simple conditional, although no place is named in its creation: *Re Rivett-Carnac's Will* (1885) 30 ChD 136. Under the Settled Land Act 1925 s 67 (replacing the Settled Land Act 1882 s 37), where personal chattels are settled to devolve with settled land, they may be sold by the tenant for life. It has been held that this provision applies where personal chattels are settled to devolve with a dignity such as a baronetcy; the dignity as an incorporeal hereditament is land within the above provision: *Re Rivett-Carnac's Will*. See also **SETTLEMENTS** vol 42 (Reissue) PARAS 941-943.

2 For the form of letters patent to be used in the creation of a baronet see the Crown Office (Forms and Proclamations Rules) Order 1992, SI 1992/1730, art 2(1), Schedule Pt III, Form I. There is now no limit to the number of baronetcies which the Crown may create. It had been originally promised that the number of baronets of England should not exceed 200, and that vacancies by extinction of issue should not be filled up. However, up to the Union with Scotland in 1707, 697 baronetcies of England, 58 baronetcies of Ireland and 166 baronetcies of Nova Scotia had been created. After the promulgation of the Union with Scotland Act 1706, England and Scotland ceased to exist in contemplation of law, and it is conceived that no new baronetcy of either kingdom could be created; but, whereas the question of the peerage of each kingdom was carefully dealt with in the Act, no reference to the baronetage appears in it.

3 See PARA 804.

4 See PARA 865 et seq.

5 13 Edw 1 (Statute of Westminster the Second) (1285) c 1 (De Donis Conditionalibus); *Re Rivett-Carnac's Will* (1885) 30 ChD 136. See PARA 808.

6 See the Promissory Oaths Act 1868 s 14(5); and **CONSTITUTIONAL LAW AND HUMAN RIGHTS** vol 8(2) (Reissue) PARA 925. For the form of oath see s 2.

862. Privileges of baronets.

The letters patent creating a baronetcy set out the privileges, rights, precedences and advantages which attach to the baronetcy[1]. Baronets have the right to the title or prefix 'Sir' and may use the post-nominal abbreviation of 'Bt' or 'Bart'. A baronetess in her own right has the prefix 'Dame' and may use the abbreviation 'Btess'. The wife of a baronet is entitled to the prefix 'Dame' but socially is always styled 'Lady', but the husband of a baronetess has no special form of address.

Baronets are entitled to certain armorial differences and the right to wear a distinctive badge in accordance with the Royal Warrants dated 17 November 1629 (baronets of Nova Scotia) and 13 April 1929 (all other baronets). A baronet ranks above all knights except Knights of the Garter[2] and immediately below the sons of the Lords of Appeal in Ordinary[3]. He has no privileges except those stated in his patent[4]. A baronet takes precedence among other baronets according to priority in date of creation[5].

1 See the Crown Office (Forms and Proclamations Rules) Order 1992, SI 1992/1730, art 2(1), Schedule Pt III, Form I. See also PARA 861.

2 As to Knights of the Garter see PARA 866. Some of the first created baronets claimed to be knighted, and as the result of a controversy respecting their precedence, the King covenanted that all the then baronets, and the eldest sons or heirs apparent of baronets, should be knighted at their request on reaching the age of 21. This right was abolished by Royal Warrant dated 19 December 1827.

3 As to the degrees of peerage see PARA 804.

4 The King originally covenanted that he and his successors would never create any new dignity having precedence between barons, lords of Parliament, and baronets, and it has been contended that a warrant granting precedence to the children of life peers is a breach of this covenant. It is thought, however, that a distinct hereditary dignity was meant.

5 All the evidence relating to the status of a baronet which can be collected from the public records purports to be printed in (1) The Herald and Genealogist vol III p 193 et seq; (2) Pixley's History of the Baronetage (1900); (3) Cockayne's Baronetage vol I Preface v et seq; and (4) The Baronetage (Anon 1911). See also Selden's Titles of Honor (3rd Edn) 679. Careful study of such evidence raises doubt whether the King intended to create a degree of nobility, or whether he merely intended to grant a hereditary pre-eminence among esquires similar to the distinction of knights banneret and ordinary knights, for the persons whom it was

proposed to dignify with the prefix 'Sir' and the suffix 'Baronet' were those who would in the ordinary course of military tenure be called upon to accept knighthood.

Halsbury's Laws of England/PEERAGES AND DIGNITIES (VOLUME 79 (2008) 5TH EDITION)/3. OTHER DIGNITIES/(1) THE BARONETAGE/863. Claim to baronetcy.

863. Claim to baronetcy.

A claim to a baronetcy should in the first instance be made to the Crown Office on behalf of the Lord Chancellor and, if not allowed, should be made by petition to the Queen in Council and determined by a committee of the Privy Council[1].

1 Royal Warrant dated 8 February 1910, London Gazette, 15 February 1910; Royal Warrant dated 10 March 1922, London Gazette, 17 March 1922, p 2234. A Committee of the Privy Council appointed by Orders in Council dated 5 March 1910 and 22 March 1928 sits as a judicial body to hear claims which may be referred. Several claims have been heard. The hearing is public, and, as a rule, reported in the press. It was the practice of James I to refer claims to dignities to the commissioners for exercising the office of Earl Marshal, when during his reign that office was in commission and there was no Earl Marshal, and it was promised that baronetcies should be subject to the jurisdiction of the Earl Marshal or the commissioners, as the case might be. No commissioners or other functionaries for exercising the office of Earl Marshal have existed for the last two centuries as there has always been an Earl Marshal. The rights of the Earl Marshal are expressly saved by the Royal Warrant dated 8 February 1910, except in so far as they are contained in the cancelled warrants dated 3 December 1783, 24 February 1785 and 30 September 1789: Royal Warrant dated 8 February 1910 arts 12, 13. The practice is that, if the Secretary of State, after obtaining a report from the Garter King of Arms (see PARA 879), finds any difficulty in advising the Sovereign as to the validity of any claim to be placed on the roll, the claim will be referred to the Attorney General for England or the Lord Advocate for Scotland, as the case may be, for opinion, and ultimately to the Privy Council as above stated: Royal Warrant dated 10 March 1922 arts 2, 3. The committee follows the rules of evidence in force in the ordinary courts of law, and probably would also have regard to the practice followed in peerage cases as to proofs of pedigree. Claims to baronetcies of Ireland would now probably be referred to the Attorney General for England; cf **CONSTITUTIONAL LAW AND HUMAN RIGHTS** vol 8(2) (Reissue) PARA 530. See also PARA 813. The Family Law Act 1986 s 56 (declarations of parentage, legitimacy and legitimation: see **CHILDREN AND YOUNG PERSONS** vol 5(3) (2008 Reissue) PARA 122) gives no jurisdiction to investigate or decide a claim to a baronetcy: see *Frederick v A-G* (1874) LR 3 P & D 196 (concerning an equivalent provision in the Legitimacy Declaration Act 1858 (repealed)).

Halsbury's Laws of England/PEERAGES AND DIGNITIES (VOLUME 79 (2008) 5TH EDITION)/3. OTHER DIGNITIES/(1) THE BARONETAGE/864. Official roll.

864. Official roll.

No person may be officially styled a baronet unless his name appears on the official roll[1] which is maintained by the Crown Office in the Ministry of Justice[2], and is published from time to time[3]. A registrar has been appointed[4] and his duties are defined by royal warrant[5].

1 Royal Warrant dated 8 February 1910 art 2.

2 Transfer of Functions (Miscellaneous) Order 2001, SI 2001/3500, art 3, Sch 1 para 2; Secretary of State for Justice Order 2007, SI 2007/2128.

3 Royal Warrant dated 8 February 1910 arts 1, 3, 5, 6, 11.

4 Royal Warrant dated 8 February 1910 art 7. The first registrar and assistant registrar were appointed by Order in Council dated 5 March 1910.

5 Royal Warrant dated 8 February 1910 arts 8, 9; Royal Warrant dated 10 March 1922 art 4.

Halsbury's Laws of England/PEERAGES AND DIGNITIES (VOLUME 79 (2008) 5TH EDITION)/3. OTHER DIGNITIES/(2) KNIGHTHOOD, ORDERS AND DECORATIONS/865. In general.

(2) KNIGHTHOOD, ORDERS AND DECORATIONS

865. In general.

Knighthood[1] is a personal dignity conferred for life. It is not of a particular kingdom, like a peerage or a baronetcy, but is a dignity recognised in every part of the Sovereign's dominions[2].

An individual of the male sex[3] is now legally entitled to use the prefix 'Sir' and to rank before untitled persons once the Sovereign's intention to confer the honour of knighthood has been officially published[4]. The individual is formally created a knight when the Sovereign or an appointed lieutenant[5] (usually a knight[6]) directs the individual to kneel and strikes the individual's shoulder with a naked sword. A knight can also be created by letters patent[7]. The oath of allegiance must be taken by all knights on their creation[8].

1 For the history of knighthood out of England and the early history in England see Selden's Titles of Honor (3rd Edn) 361 et seq, 451 et seq, 636 et seq; Nicolas's History of the Orders of Knighthood of the British Empire. The most authentic list of English knights is in Shaw's Knights of England (1906).

2 See *Lord Advocate v Walker Trustees* [1912] AC 95 at 104, HL.

3 As to the eligibility of women for knighthoods see PARA 866.

4 As to the degrees of peerage see PARA 804.

5 By virtue of his office, the Lord Lieutenant of Ireland had authority to confer knighthood: unanimous opinion of the judges summoned by the King in Council 1823; and see 1 Nicolas's History of the Orders of Knighthood of the British Empire, Introduction, xiii.

6 See 1 Nicolas's History of the Orders of Knighthood of the British Empire, Introduction, xv.

7 If a Sovereign knights a Sovereign, he also passes his arm around the shoulders. It was formerly conferred by ceremonial investiture, which is now represented by the accolade. Much of the ceremonial of the investiture still survives in the ceremony of the coronation, eg in the vesting of the Sovereign in garments of a sacerdotal character and presenting him with the sword and spurs. See **CROWN AND ROYAL FAMILY** vol 12(1) (Reissue) PARA 20. Knights have also been created by letters patent since 1777: 1 Nicolas's History of the Orders of Knighthood of the British Empire, Introduction, xv.

8 See the Promissory Oaths Act 1868 s 14(5); and **CONSTITUTIONAL LAW AND HUMAN RIGHTS** vol 8(2) (Reissue) PARA 925. For the form of oath see s 2.

Halsbury's Laws of England/PEERAGES AND DIGNITIES (VOLUME 79 (2008) 5TH EDITION)/3. OTHER DIGNITIES/(2) KNIGHTHOOD, ORDERS AND DECORATIONS/866. Orders of knighthood.

866. Orders of knighthood.

The age of chivalry engendered societies whose membership was restricted to knights. Of these the earliest in England was a society known as the Order of the Garter[1], founded by Edward III in or about 1348[2]. It is limited to 24 knights in addition to the Sovereign (who is head of the order) and the Prince of Wales, but the Sovereign has the power to create additional royal knights and may appoint foreign Sovereigns as extra knights. Provision was made for the appointment of foreign knights in 1954. Historically the Garter was not normally bestowed on

peers, particularly prior to the reign of Edward IV. Knights of the Garter take precedence in England before Privy Councillors and baronets[3].

Another society of knights in England, the precise origin of which is not clear, is the Order of the Bath[4]. The order was originally civil in nature but was converted into a military order during the reign of George III as a consequence of the Napoleonic War. George III also divided the Order into different grades of companionship. Because of such changes the Order has lost the medieval character preserved by the Garter. The Order of the Bath is now divided into two branches, military and civil[5].

Other orders of knighthood are:

26 (1) Knights of St Andrew or the Thistle, founded or revived in Scotland by James II in 1687[6], and re-established on 31 December 1703;
27 (2) Knights of St Patrick, founded in Ireland by George III on 5 February 1783[7], and revived in 1833;
28 (3) Knights of the Order of the Star of India, founded in 1861, and used to reward service in connection with India[8];
29 (4) Knights of St Michael and St George, founded in 1818[9] to reward service in the Mediterranean, chiefly Maltese and Ionic, but now used to reward all colonial or diplomatic service;
30 (5) Knights of the Order of the Indian Empire, founded to commemorate the title of Emperor or Empress of India in 1878[10];
31 (6) Knights of the Royal Victorian Order, founded in 1896[11];
32 (7) Knights of the Order of the British Empire, founded in 1917[12].

1 See Statutes of the Order of the Garter.

2 The year 1344 was given by Selden: see Selden's Titles of Honor (3rd Edn) 657; 1 Bl Com (14th Edn) 403. The first 25 knights, called Knights Founders, the first being Edward, Prince of Wales, had been created before or on St George's Day 1348: see 1 Shaw's Knights of England (1906) 1. For a history of the Order of the Garter see Nicolas's History of the Orders of Knighthood of the British Empire vols 1, 2.

3 1 Bl Com (14th Edn) 403; and see PARA 862. As to the baronetage see PARAS 861-864.

4 The bath was the first part of the ceremonial for creating a knight (see Anstis's Knighthood of the Bath 5), but to call knights of the twelfth century Knights of the Bath (see 1 Shaw's Knights of England (1906) 109) seems somewhat strange. It is considered that knighthood by baptism existed side by side with knighthood by accolade. The antiquity of the bath is illustrated by the coronation ceremony. The ancient practice was for the King to bathe at the palace of Westminster the day before he proceeded to the Abbey, with a number of youthful aspirants who were knighted by the King when crowned, after investiture as a knight by the Church: see 1 Bl Com (14th Edn) 404. For a history of the Knights of the Bath see 3 Nicolas's History of the Orders of Knighthood of the British Empire 3 et seq.

5 The Order is also divided into three classes, namely Knights Grand Cross, Knights Commanders (both of which are entitled to be called 'knight') and Companions, who take precedence of esquires but are not entitled to be called 'knight'. Each class is restricted in point of numbers. The Order is now open to women, with the substitution of 'Dame' for 'Knight'.

6 3 Nicolas's History of the Orders of Knighthood of the British Empire 3 et seq.

7 4 Nicolas's History of the Orders of Knighthood of the British Empire 3 et seq. No appointment has been made since 1936 when the honour was conferred upon the Duke of York (later George VI).

8 London Gazette dated 25 June 1861 p 2621. It consists of the Sovereign, the Grand Master, and a fixed number of Companions divided into three classes, namely Knights Grand Commanders, Knights Commanders and Companions. No appointment has been made since India became independent in 1947.

9 Letters Patent dated 27 April 1818. Both sexes are eligible. The Order comprises a fixed number of Knights Grand Cross and Dames Grand Cross, Knights Commanders and Dames Commanders, and Companions. Each class ranks next after the corresponding class of the Order of the Star of India. For a history of the Knights of St Michael and St George see 4 Nicolas's History of the Orders of Knighthood of the British Empire 3.

10 The Order consists of the Sovereign, the Grand Master, and three classes, namely Knights Grand Commanders, Knights Commanders, and Companions. Each class ranks next after the corresponding class of the Order of St Michael and St George. No appointment has been made since India became independent in 1947.

11 London Gazette dated 24 April 1896 p 2455. Both sexes are eligible. The Order consists of the Sovereign, the Grand Master and ordinary members. It is divided into five classes, namely Knights Grand Cross and Dames Grand Cross, Knights Commanders and Dames Commanders, Commanders, and Members of the Fourth and Fifth Classes. Ordinary members must be subjects of the British Crown who have rendered extraordinary, important or personal services to the Sovereign. Foreign princes may be appointed honorary members. Knights Grand Cross and Knights Commanders rank after the corresponding classes of the Order of the Indian Empire. Commanders and members of the Fourth Class, known as Lieutenants, rank after Companions of the Indian Empire. Members of the Fifth Class rank after the eldest sons of knights bachelors. The number of members is unlimited. There is also a decoration, known as the Royal Victorian Chain, which is not part of the Order.

12 London Gazette dated 24 August 1917 p 8791. Both sexes are eligible. The Order consists of the Sovereign, the Grand Master and five classes, namely, Knights Grand Cross and Dames Grand Cross, Knights Commanders and Dames Commanders, Commanders, Officers and Members. In 1918 it was divided into two sections, civil and military. It is bestowed for service in civil life and as a recognition for military service in peace and war.

867. Knights bachelor and miscellaneous orders.

Knights bachelor, or ordinary knights, are those who are merely created knights but belong to no particular Order[1]. Ordinary knighthood is usually conferred upon the Judges of the Supreme Court of Judicature, the Attorney General and the Solicitor General[2].

There are numerous orders and decorations which do not confer any title or right of precedence[3].

1 Originally there were no orders of knights, all knights being either knights banneret or knights bachelor. The distinction between the two, which is no longer of significance, was purely military; knights banneret were entitled to a banner in time of war and to have command over knights bachelor, who were only entitled to a pennon. See 1 Bl Com (14th Edn) 404, 405. As to the orders of knighthood see PARA 866.

2 See **LEGAL PROFESSIONS** vol 66 (2009) PARA 1119; **CONSTITUTIONAL LAW AND HUMAN RIGHTS** vol 8(2) (Reissue) PARA 529; **COURTS** vol 10 (Reissue) PARA 515 et seq; **CRIMINAL LAW, EVIDENCE AND PROCEDURE** vol 11(3) (2006 Reissue) PARA 1065.

3 Examples are the Victoria Cross, instituted by Royal Warrant dated 29 January 1856 for conspicuous bravery in the field; the Order of Victoria and Albert, instituted in 1862 and confined to women, the last surviving member being Princess Alice, Countess of Athlone, who died in 1981; the Albert Medal, founded by Royal Warrant dated 7 March 1866 for gallantry in saving life at sea or on land (and exchanged in 1971 for the George Cross); the Imperial Order of the Crown of India, instituted on 31 December 1877 and confined to women; the Royal Red Cross, founded by Royal Warrant dated 23 April 1883 and confined to women; the Distinguished Service Order, instituted in 1886 for commissioned officers; the Order of Merit, founded on 23 June 1902 as a special distinction for eminent persons and limited to 24 members; the Imperial Service Order, instituted in 1902 for members of the Civil Service and limited to 850 home and 575 overseas companions; the Edward Medal, founded by Royal Warrant dated 13 July 1907 for heroism in mines and quarries (and exchanged in 1971 for the George Cross); the Territorial Decoration, founded in 1908; the Order of the Companions of Honour, founded on 4 June 1917 and limited to 65 companions; and the George Cross, instituted by Royal Warrant dated 24 September 1940 (amended 8 May 1941 and 3 November 1942) for gallantry, normally limited to civilians.

Halsbury's Laws of England/PEERAGES AND DIGNITIES (VOLUME 79 (2008) 5TH EDITION)/3. OTHER DIGNITIES/(3) FOREIGN DIGNITIES, ORDERS AND DECORATIONS/868. Foreign dignities.

(3) FOREIGN DIGNITIES, ORDERS AND DECORATIONS

868. Foreign dignities.

Dignities created by foreign Sovereigns are not recognised by law in the United Kingdom, but licences to accept and enjoy them have been granted by the Sovereign by warrant addressed to the Earl Marshal[1]. A petition stating good reason for leave to bear such a title in England was formerly addressed to the Sovereign and sent to the Secretary of State for the Home Department in the same manner as other petitions for warrants of precedency, changes of name and similar matters[2]. However, the availability of this procedure was terminated by royal warrant in 1932, and there is now no procedure for recognising foreign titles. A foreign title lawfully used in England gives no precedence in law[3], but it is usually recognised in courtesy.

1 For an example of a licence see the *De Scales Peerage Case* (1857) Minutes of Evidence 71.

2 See PARA 875.

3 As to the degrees of peerage see PARA 804. See also PARA 829.

Halsbury's Laws of England/PEERAGES AND DIGNITIES (VOLUME 79 (2008) 5TH EDITION)/3. OTHER DIGNITIES/(3) FOREIGN DIGNITIES, ORDERS AND DECORATIONS/869. Foreign orders and decorations.

869. Foreign orders and decorations.

Orders and decorations granted by a foreign Sovereign are not recognised in law in the United Kingdom[1].

Regulations concerning the wearing of foreign orders and medals by British subjects are administered in accordance with Her Majesty's wishes by the Secretary of State for Foreign and Commonwealth Affairs, to whom all applications for Her Majesty's permission to make use of such distinctions should be addressed[2]. These rules on the acceptance and wearing of foreign awards preclude the acceptance of medals for events in the distant past or more than five years previously[3].

1 See the ruling in the case of the Knights of the Guelphic Order of Hanover (which was founded in 1815 by George IV whilst Prince Regent, and not conferred since the death of William IV in 1837).

2 See the Foreign Office Regulations (April 1969).

3 HL Official Report (5th Series), 11 January 2005, written answers col *34*.

Halsbury's Laws of England/PEERAGES AND DIGNITIES (VOLUME 79 (2008) 5TH EDITION)/4. ARMORIAL BEARINGS/(1) THE LAW OF ARMS/870. The law of arms.

4. ARMORIAL BEARINGS

(1) THE LAW OF ARMS

870. The law of arms.

The use of arms, crests, supporters and other armorial insignia is governed by the law of arms. The law of arms is not part of the common law, although it is part of the law of England and is noticed as such by the common law courts[1]. The substance of the law of arms is to be found in the customs and usages of the Court of Chivalry[2].

1 *Paston v Ledham* (1459) YB 37 Hen VI, Pasch, pl 8; *R v Parker* (1668) 1 Sid 353.

2 4 Co Inst 125; *Puryman v Cavendish* (1397) Close Roll 21 Ric II, p 1 m 5. As to the Court of Chivalry see PARA 884.

Halsbury's Laws of England/PEERAGES AND DIGNITIES (VOLUME 79 (2008) 5TH EDITION)/4. ARMORIAL BEARINGS/(1) THE LAW OF ARMS/871. Descent of armorial bearings.

871. Descent of armorial bearings.

Arms are usually granted to the grantee and his descendants with due and proper differences according to the laws of arms[1]. Sometimes arms are granted with an extended limitation embracing all the descendants of the father or some more remote ancestor of the grantee[2]. Arms descend to males in the first instance[3], but on the failure of male descendants they may be transmitted through females as quarterings.

1 A grant of arms is a document in which every member of the family is interested, and whichever of them has possession of it is entitled to keep it, but may be called upon by the others to produce it: *Stubs v Stubs* (1862) 1 H & C 257. See PARA 870.

2 For a copy of a grant with an extended limitation see *Stubs v Stubs* (1862) 1 H & C 257.

3 *Wiltes Peerage Case* (1869) LR 4 HL 126 at 153 per Lord Chelmsford.

Halsbury's Laws of England/PEERAGES AND DIGNITIES (VOLUME 79 (2008) 5TH EDITION)/4. ARMORIAL BEARINGS/(1) THE LAW OF ARMS/872. Right to bear arms.

872. Right to bear arms.

Arms may only be borne by virtue of ancestral right or of a grant made under lawful authority[1]. Ancestral right is normally proved from the records of the College of Arms[2], especially those relating to the heralds' visitations[3].

1 See Squibb's High Court of Chivalry 184, 185.

2 As to the College of Arms see PARA 881.

3 As to visitations see PARA 883. As to the heralds and other officers of the College of Arms see PARA 878 et seq. As to the descent of armorial bearings see PARA 871.

Halsbury's Laws of England/PEERAGES AND DIGNITIES (VOLUME 79 (2008) 5TH EDITION)/4. ARMORIAL BEARINGS/(1) THE LAW OF ARMS/873. Grants of arms.

873. Grants of arms.

The right to grant and regulate armorial bearings has from earliest times been inherent in the office of a King of Arms[1] within his province, as representative of the Sovereign, and since the sixteenth century express words delegating this royal prerogative have been inserted in the letters patent of their appointments[2]. Since the seventeenth century the right of the English Kings of Arms has, however, been subject to regulation by the Earl Marshal, whose warrant is necessary in every case to enable them to assign new arms[3]. The Earl Marshal's warrant is issued in response to a memorial signed by or on behalf of the proposed grantee[4]. The modern practice is for grants of arms to bodies corporate to be made by all three Kings of Arms. A grant to a natural person is made by Garter and the King of Arms of the province in which the grantee resides[5].

1 As to Kings of Arms see PARA 879.

2 As to the appointment of Kings of Arms see PARA 878.

3 As to the Earl Marshal see PARA 878 note 4.

4 The memorial is usually prepared by one of the officers of arms (see PARA 878 et seq). It should be carefully drafted since, if approved, the allegations contained in it will be repeated in the warrant and ultimately in the grant. Stamp duty formerly exigible on the grant of arms or armorial ensigns only was abolished by the Finance Act 1949 ss 35, 52(10), Sch 8 Pt I para 16, Sch 11 Pt V.

5 As to the provinces of the Kings of Arms see PARA 879 note 1.

Halsbury's Laws of England/PEERAGES AND DIGNITIES (VOLUME 79 (2008) 5TH EDITION)/4. ARMORIAL BEARINGS/(1) THE LAW OF ARMS/874. Jurisdiction over arms.

874. Jurisdiction over arms.

Complaints relating to the usurpation of armorial bearings are dealt with by the Court of Chivalry[1]. The common law courts have no jurisdiction in those matters[2]. The Court of Chivalry is the only surviving civil law court, and its procedure is in accordance with the forms of the civil law[3].

Appeals from the Court of Chivalry to the Judicial Committee of the Privy Council, to which the jurisdiction of the Court of Delegates was transferred in 1832, have been abolished[4].

1 See eg *Manchester Corpn v Manchester Palace of Varieties Ltd* [1955] P 133 at 149, [1955] 1 All ER 387 at 393, Court of Chivalry, per Lord Goddard (Surrogate). As to the origin of the Court of Chivalry see PARA 884.

2 *Duke of Buckingham's Case* (1514) Keil 170; *R v Parker* (1668) 1 Sid 353.

3 See *A Verbatim Report of the Case in the High Court of Chivalry of The Lord Mayor, Aldermen and Citizens of the City of Manchester versus The Manchester Palace of Varieties Limited* published by the Heraldry Society (1955).

4 *Blount's Case* (1737) 1 Atk 295; Privy Council Appeals Act 1832 s 3 (repealed); Judicial Committee Act 1833 s 3; Judicial Committee Act 1844 s 11; Ecclesiastical Jurisdiction Measure 1963 s 87, Sch 5 (repealed).

Halsbury's Laws of England/PEERAGES AND DIGNITIES (VOLUME 79 (2008) 5TH EDITION)/4. ARMORIAL BEARINGS/(1) THE LAW OF ARMS/875. Grant of arms and procedure to obtain royal licence for change of surname.

875. Grant of arms and procedure to obtain royal licence for change of surname.

The granting of arms is part of the prerogative of the Sovereign[1], which she delegates, by letters patent under the Great Seal, to the Kings of Arms[2], to exercise in accordance with the law of arms[3].

In order to obtain a royal licence authorising a change of surname and the bearing of the arms of another family[4], an application must be made to the College of Arms[5] for a petition in proper form, stating the reasons for the application and other necessary matters, to be drawn up by one of the officers of arms, to be signed by the applicant, and submitted to the Crown Office and through the Lord Chancellor to the Sovereign. The granting of a licence is a matter of discretion in which the Sovereign is advised by the Lord Chancellor, subject to an assurance by Garter King of Arms on behalf of the Earl Marshall that he has no objection to the granting of a licence[6].

1 To use arms, other than the royal arms (see **CROWN AND ROYAL FAMILY** vol 12(1) (Reissue) PARA 44), without a grant or other title is not unlawful in the sense that any penalty is attached. Arms, being in the nature of dignities and governed by similar rules both in origin and enjoyment, are not within the jurisdiction of the ordinary courts of law but are within the jurisdiction of the Court of Chivalry: see *Earl Cowley v Countess Cowley* [1901] AC 450 at 456, HL; *Manchester Corpn v Manchester Palace of Varieties Ltd* [1955] P 133, [1955] 1 All ER 387, Court of Chivalry; and PARA 874.

2 As to Kings of Arms see PARA 879. As to their appointment see PARA 878.

3 See PARA 870.

4 As to name and arms clauses see **SETTLEMENTS** vol 42 (Reissue) PARAS 748-749. A royal licence is not necessary merely to effect a change of surname, although it is a method by which such a change can be authenticated: see **PERSONAL PROPERTY** vol 35 (Reissue) PARA 1274.

5 As to the College of Arms see PARA 881.

6 For the purposes of obtaining advice, the Lord Chancellor consults Garter King of Arms on behalf of the Earl Marshal on the terms of the petition and the genealogical and heraldic aspects of the case: see PARA 878 note 4. No precise rules are laid down as to the exercise of the discretion, and probably no such rules could well be formulated. It may be broadly stated, however, that, while an application for a royal licence for change of surname only may be rejected on the ground that a royal licence is not necessary for this purpose, an application to transfer arms, in compliance with a request contained in a will or in consideration of some pecuniary or other benefit, or based on representation in blood traced to some maternal ancestor, will be favourably considered; whereas an application made in pursuance of a direction which is coupled with a forfeiture clause is invariably granted. An application for which no reasonable ground is alleged, or which is made from mere caprice, is, however, likely to be rejected. As to change of name see **PERSONAL PROPERTY** vol 35 (Reissue) PARA 1272 et seq.

Halsbury's Laws of England/PEERAGES AND DIGNITIES (VOLUME 79 (2008) 5TH EDITION)/4. ARMORIAL BEARINGS/(1) THE LAW OF ARMS/876. Issue of royal warrant.

876. Issue of royal warrant.

When the prayer of a petition[1] is granted, a warrant addressed to the Earl Marshal[2] following in its terms the allegations of the petition is issued under the royal sign manual[3]. The royal

warrant so issued is duly recorded in the College of Arms[4] by warrant of the Earl Marshal and is usually notified in the London Gazette. In its terms the licence is permissive; it does not purport to confer a new name or to grant new arms[5].

1 As to the procedure to obtain a royal licence for the change of surname by petition see PARA 875.

2 As to the Earl Marshal see PARA 878 note 4.

3 See **CONSTITUTIONAL LAW AND HUMAN RIGHTS** vol 8(2) (Reissue) PARA 908.

4 As to the College of Arms see PARA 881.

5 Fees are payable to the officers of arms for preparing and presenting the petition, for reporting to the Home Secretary and recording the royal licence, and for granting or exemplifying the arms. There are also fees due to the Crown Office. Stamp duty on exemplifications and on grants to use a surname and arms was abolished by the Finance Act 1949 ss 35, 52(10), Sch 8 Pt I para 16, Sch 11 Pt V.

Halsbury's Laws of England/PEERAGES AND DIGNITIES (VOLUME 79 (2008) 5TH EDITION)/4. ARMORIAL BEARINGS/(1) THE LAW OF ARMS/877. Exemplification and record of arms.

877. Exemplification and record of arms.

As regards armorial bearings the royal licence[1] contains a proviso that the arms are to be exemplified according to the law of arms and recorded in the College of Arms[2], and that otherwise the licence and permission are void and of no effect[3].

It is the duty of the Kings of Arms[4], as the delegated representatives of the Sovereign, to determine the arms of the testator or settlor, and to exemplify these to the person authorised by the royal licence to bear them. Should the testator or settlor have had no valid claim to arms, the Kings of Arms grant arms to be borne by the applicant in compliance with the terms of the royal licence[5].

1 See PARA 876.

2 See PARA 870. As to the College of Arms see PARA 881.

3 For an example of a royal licence see the *Cromwell Peerage Claim* (1922), App 177; and see the London Gazette dated 28 October 1960 p 7285.

4 As to Kings of Arms see PARA 879.

5 *Austen v Collins* (1886) 54 LT 903. An obligation to assume arms cannot be satisfied by a mere de facto user; the authority of a royal licence through the College of Arms is required: *Re Berens, Re Dowdeswell, Berens-Dowdeswell v Holland-Martin* [1926] Ch 596 at 605; and see **SETTLEMENTS** vol 42 (Reissue) PARAS 745, 749.

Halsbury's Laws of England/PEERAGES AND DIGNITIES (VOLUME 79 (2008) 5TH EDITION)/4. ARMORIAL BEARINGS/(2) THE OFFICERS OF ARMS AND THE HIGH COURT OF CHIVALRY/878. Officers of Arms and their appointment.

(2) THE OFFICERS OF ARMS AND THE HIGH COURT OF CHIVALRY

878. Officers of Arms and their appointment.

There are three ranks of officers of arms, namely: (1) Kings of Arms[1]; (2) Heralds[2]; and (3) Pursuivants[3]. The officers are often referred to indifferently as 'heralds'. There are three Kings of Arms, six Heralds and four Pursuivants. They are members of the royal household and are appointed by the Sovereign by letters patent under the Great Seal, and are under the jurisdiction of the Earl Marshal[4].

1 As to Kings of Arms see PARA 879.

2 As to Heralds see PARA 880.

3 As to Pursuivants see PARA 880.

4 The office of Earl Marshal is hereditary in the family of the Duke of Norfolk: see **CONSTITUTIONAL LAW AND HUMAN RIGHTS** vol 8(2) (Reissue) PARA 546. As to his duties at coronations see **CROWN AND ROYAL FAMILY** vol 12(1) (Reissue) PARA 20. See further PARAS 884-886. As to the use of the Great Seal see **CONSTITUTIONAL LAW AND HUMAN RIGHTS** vol 8(2) (Reissue) PARA 909.

Halsbury's Laws of England/PEERAGES AND DIGNITIES (VOLUME 79 (2008) 5TH EDITION)/4. ARMORIAL BEARINGS/(2) THE OFFICERS OF ARMS AND THE HIGH COURT OF CHIVALRY/879. Kings of Arms.

879. Kings of Arms.

The English Kings of Arms are (1) Garter; (2) Clarenceux; and (3) Norroy and Ulster[1]. The senior of these is the Garter King of Arms, the office of which was constituted at a chapter of the Order of the Garter held in 1415, at which he was declared to be an officer of the Order and sovereign within the office of arms over all other officers of arms of the kingdom of England.

1 The provinces and jurisdictions of Clarenceux and of Norroy and Ulster in England are south and north of the river Trent respectively. The jurisdiction of Garter in England is not restricted, and he has also an Imperial jurisdiction over persons not domiciled in the United Kingdom. Lyon King of Arms has jurisdiction in Scotland, and Norroy and Ulster King of Arms in Northern Ireland. There are also kings of arms of the Orders of the Bath, St Michael and St George, and the British Empire, but these are only titular kings of arms and have no armorial functions, and they are not members of the College of Arms (as to which see PARA 881).

Halsbury's Laws of England/PEERAGES AND DIGNITIES (VOLUME 79 (2008) 5TH EDITION)/4. ARMORIAL BEARINGS/(2) THE OFFICERS OF ARMS AND THE HIGH COURT OF CHIVALRY/880. Heralds and Pursuivants.

880. Heralds and Pursuivants.

There are six Heralds, and are known as Windsor, Chester, Lancaster, Somerset, York and Richmond[1]. There are four Pursuivants, known as Rouge Croix, Rouge Dragon, Bluemantle and Portcullis. It is not the function of Heralds or Pursuivants to grant arms, although they act as agents for applicants for grants of arms[2].

1 The number of Heralds has varied from time to time. Heralds were originally, as their name suggests, ambassadors or messengers, the bearers of compliment or defiance from one prince to another, habited for the purpose with the armorial insignia of their masters. The habit still survives in the Herald's tabard.

2 For the practice relating to grants of arms see PARA 873.

Halsbury's Laws of England/PEERAGES AND DIGNITIES (VOLUME 79 (2008) 5TH EDITION)/4. ARMORIAL BEARINGS/(2) THE OFFICERS OF ARMS AND THE HIGH COURT OF CHIVALRY/881. The College of Arms.

881. The College of Arms.

The Kings of Arms[1], Heralds[2] and Pursuivants[3] were incorporated in 1556[4] by King Philip and Queen Mary, who gave them a mansion called Derby House, which stood (until it was destroyed by the Great Fire of London in 1666) on the site of the present building known as the College of Arms or Heralds' College[5].

1 As to Kings of Arms see PARA 879.

2 As to Heralds see PARA 880.

3 As to Pursuivants see PARA 880.

4 The officers of arms had earlier been incorporated as the College of Heralds by letters patent of Richard III in 1484, but on the King's death his acts were declared void.

5 Both this charter and the earlier one of 1484 (see note 4) are printed in *Noble's History of the College of Arms*. The Heralds' College is situated at Queen Victoria Street, London EC4V 4BT.

Halsbury's Laws of England/PEERAGES AND DIGNITIES (VOLUME 79 (2008) 5TH EDITION)/4. ARMORIAL BEARINGS/(2) THE OFFICERS OF ARMS AND THE HIGH COURT OF CHIVALRY/882. Heralds and Pursuivants Extraordinary.

882. Heralds and Pursuivants Extraordinary.

Heralds Extraordinary and Pursuivants Extraordinary are occasionally appointed[1]. They are nominated by the Earl Marshal and appointed by royal warrant addressed to the Earl Marshal[2]. They are not members of the College of Arms and have only ceremonial duties[3].

1 The present extraordinary officers of arms are the New Zealand Herald Extraordinary, the Beaumont Herald Extraordinary, the Maltravers Herald Extraordinary, the Wales Herald Extraordinary, the Norfolk Herald Extraordinary, the Arundel Herald Extraordinary, and the Fitzalan Pursuivant Extraordinary.

2 As to the Earl Marshal see PARA 878 note 4.

3 The uniform and insignia of an extraordinary officer of arms are identical with those of an officer in ordinary of the same rank, save for a slight difference in the design of the sceptre. As to the College of Arms and the officers of arms see PARA 878 et seq.

Halsbury's Laws of England/PEERAGES AND DIGNITIES (VOLUME 79 (2008) 5TH EDITION)/4. ARMORIAL BEARINGS/(2) THE OFFICERS OF ARMS AND THE HIGH COURT OF CHIVALRY/883. Visitations.

883. Visitations.

It was the duty of the provincial Kings of Arms, as ministers responsible for the true bearing of arms, to visit their provinces[1]. In the sixteenth and seventeenth centuries special royal commissions were issued to the Kings of Arms to visit the different counties in England and Wales and record the arms and pedigrees of all who could establish a right to the title of esquire or gentleman. The visitations were carried out county by county. The gentry in the respective counties were directed to attend the visiting King of Arms or his deputy at such place as he should direct, and to make proof of their arms, or disclaim a right to arms. The sheriffs were ordered to assist in securing attendance and generally to aid the King of Arms in the effective performance of his duty[2]. Most of the counties were thus visited two or three times in the 150 years covered by the visitations, either by the Kings of Arms themselves or by Heralds[3] appointed by them as their deputies, and the census of arms thus taken may be considered to be practically exhaustive of those then capable of proof.

The official returns to these royal commissions, called visitations, are kept in the College of Arms[4] and are evidence in the courts of law[5]. The proper witness to produce them is an officer of arms[6].

1 As to Kings of Arms see PARA 879.

2 The practice began in 1530: see Wagner *Heralds and Heraldry in the Middle Ages* 9 et seq. As to visitations before 1530 see Wagner 106 et seq. The last visitation was held in 1687. The royal commissions were addressed to the Kings of Arms in their respective provinces. The commissions also gave authority to destroy all representations of coat armour the right to which was not proved.

3 As to Heralds see PARAS 878, 880.

4 As to the College of Arms see PARA 881.

5 The visitations have often been received in evidence in peerage claims; eg the deputation of visitation in 1681 was put in evidence in the *Shrewsbury Peerage Case* (1854) Minutes of Evidence 663, 664, but on some occasions the commission to hold a visitation has also been required: see *Palmer's Peerage Law in England* 236. The collection of 'Visitations' in the Harleian and other manuscripts in the British Museum and other libraries, many of which have been printed, are at best only copies of the official visitations. Some are merely notes taken by the Heralds who acted as deputies to the Kings of Arms, from which, after examination and collation in London with other records in the College of Arms, the official visitations were compiled. These manuscripts cannot be relied on to correspond with the official visitations, and many of them bear very little relation to their alleged originals.

6 As to the admissibility and production of public documents see **CIVIL PROCEDURE** vol 11 (2009) PARAS 821, 884, 902 et seq; and as to ancient documents generally see **CIVIL PROCEDURE** vol 11 (2009) PARAS 869-875.

Halsbury's Laws of England/PEERAGES AND DIGNITIES (VOLUME 79 (2008) 5TH EDITION)/4. ARMORIAL BEARINGS/(2) THE OFFICERS OF ARMS AND THE HIGH COURT OF CHIVALRY/884. The High Court of Chivalry.

884. The High Court of Chivalry.

The Lord High Constable and the Earl Marshal are two great officers of state whose duties in the Middle Ages were largely connected with the army in the field[1]. From about 1348 onwards they jointly held a court, known as the High Court of Chivalry or Curia Militaris, in which offences committed out of the realm and matters relating to arms not triable under the common law were tried[2]. Since the beginning of the sixteenth century appointments to the office of Lord High Constable have been made only on special occasions, mostly coronations[3], but the Court of Chivalry has continued to be held before the Earl Marshal alone and in consequence it has often been known as the Earl Marshal's Court[4]. Questions of right to arms, precedence, descent and other kindred matters of honour which are not within the jurisdiction of the ordinary courts of law are decided there[5]. A declaration of that jurisdiction by Charles II in

1672 defined the Earl Marshal as next and immediate officer under the Sovereign for determining and ordering all matters concerning arms, ensigns of nobility, honour and chivalry. The court last sat in 1954[6], but until then had not sat for over 200 years[7].

1 As to the Earl Marshal see PARA 878 note 4.

2 The powers and jurisdiction of the court were defined by 8 Ric 2 c 5 (Jurisdiction of Constable and Marshal) (1384), and 13 Ric 2 stat 1 c 2 (Jurisdiction of Constable and Marshal) (1389), both repealed by the Statute Law Revision and Civil Procedure Act 1881 s 3.

3 See **CROWN AND ROYAL FAMILY** vol 12(1) (Reissue) PARA 20.

4 In practice the Earl Marshal may delegate his role to a surrogate who is a professional lawyer: see note 6.

5 See **COURTS** vol 10 (Reissue) PARA 860.

6 *Manchester Corpn v Manchester Palace of Varieties Ltd* [1955] P 133, [1955] 1 All ER 387, Court of Chivalry (the Duke of Norfolk (Earl Marshal) and Lord Goddard CJ (surrogate)). For the practice and procedure of the court see Squibb's High Court of Chivalry 191 et seq.

7 Squibb's High Court of Chivalry 117.

Halsbury's Laws of England/PEERAGES AND DIGNITIES (VOLUME 79 (2008) 5TH EDITION)/4. ARMORIAL BEARINGS/(2) THE OFFICERS OF ARMS AND THE HIGH COURT OF CHIVALRY/885. Powers of officers of arms.

885. Powers of officers of arms.

This jurisdiction of the Earl Marshal[1], coupled with the inherent right of the Kings of Arms[2] to regulate arms, and the power expressly delegated to them by the Sovereign to grant arms, constitute the authority of the officers of arms over all matters of arms and descent and kindred subjects[3]. As officers of the Earl Marshal their acts in matters armorial cannot be questioned in any court of law[4]. The records of their official acts are preserved in the College of Arms[5].

1 See PARAS 878 note 4, 884.

2 As to Kings of Arms see PARA 879.

3 As to the officers of arms see PARA 878 et seq.

4 *Austen v Collins* (1886) 54 LT 903.

5 As to the College of Arms see PARA 881.

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886. Privileges of officers of arms.

The officers of arms, whether in ordinary or extraordinary[1], are exempt from election or appointment as mayor, sheriff or churchwarden or to any other public office in a city, town or village and from tolls in markets and other places[2].

1 See PARA 878 et seq.

2 It is recited in a charter of confirmation dated 4 June 1549, printed in Anstis's Register of the Most Noble Order of the Garter (1724), Preface xxiv et seq, that these privileges have been enjoyed for 'time out of man's memory'. The charter also confirms an exemption from all taxes, but this has not been claimed for many years. Being a common law exemption, it appears, however, not to have been excluded by the Income Tax Act 1842 s 187 (repealed), which was in similar terms to the Income and Corporation Taxes Act 1988 s 829(4) (repealed). See now the Income Tax Act 2007 which provides that no provision in letters patent granted by the Crown is to be construed as conferring exemption from income tax (see s 844(1), (2)) and that any provision of the letters patent purporting to override the effect of this provision is void (s 844(3)).